No 133

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IN THE

Supreme Court of the United States

October Term, 1945.

No. 138

NICHOLAS J. CURTIS, Petitioner,

vs.

UTAH FUEL COMPANY, a corporation, its officers and agents, specifically; DR. E. R. MURPHY; DR. ROBERT S. ALLISON (deceased); DR. FRANCIS S. BASCOM (deceased); H. COLLIN MINTON, JR., and FERDINAND ERICKSEN, its attorneys; NICHOLAS J. PAPPAS, Paterson, N. J.; HELEN N. PAPPAS, Paterson, N. J.; SORTIRIOS NICHOLAIDIS, Paterson, N. J. (not served); HARRY SUSSMAN, Paterson, N. J.; WILLIAM V. ROSENKRANS, Paterson, N. J.; LOUIS BROWNLOW, Washington, D. C. (not served); CHARLES W. KUTZ, Washington, D. C. (in default); DR. PERCY HINKLING, Washington, D .C. (deceased); WILLIAM H. FAY, Washington, D. C. (cannot be found); WILLIAM J. HAZEN (MELVIN J. HAYS), Washington, D. C. (cannot be found); WILLIAM H. FOLLAND, Salt Lake City, Utah (in default; no motion or other pleading); DR. LESLIE J. PAUL, Salt Lake City, Utah (no appearance; in default); DR. SAMUEL WOLF, Salt Lake City, Utah (deceased); SIMON BAMBERGER, Salt Lake City, Utah (deceased, BAMBERGER COAL CO. substituted); DR. FREDERICK DUNN, Springville, Utah (appear by Special Appearance, name only); DR. FRED W. TAYLOR, Provo, Utah (no appearance; in default); DR. A. C. CALLISTER, Salt Lake City, Utah (appearance by Special Appearance, name only); DR. D. E. SMITH, Salt Lake City, Utah (appearance by Special Appearance, name only); CAROL C. JOHNSON, New York (Motion to Vacate); JOSEPH RIRIE, Salt Lake City, Utah (deceased); D. O. LARSON, Salt Lake City, Utah (no appearance; in default); CHARLES E. MAYBE, Salt Lake City, Utah (no appearance, name only on Special Appearance list, no Motion or Affidavit); MARK TUTTLE, Salt Lake City, Utah (no appearance; in default); ADDISON P. ROSENKRANS, Paterson, N. J.; LOUIS ANTONOPOULOS and GEORGE LAVDAS, Trenton, N. J.; CHARLTON OGBORN and CAROL C. JOHNSON, New York City, N. Y.; GROVER A. GILES, Salt Lake City, Utah, and ZAR E. HAYES, Salt Lake City, Utah. Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS THIRD CIRCUIT, PHILADELPHIA, PENNA.

NICHOLAS J. CURTIS, LL.B., Petitioner,
Appearing in Person,
145 N. Broad St., Trenton, New Jersey.

GROVER A. GILES,
Attorney General of the State of Utah.

ZAR E. HAYES,
Assistant Attorney General of the State of Utah.

Associated with:
H. COLLIN MINTON, JR. and
H. BRUA CAMPBELL,
As Attorneys for Appellees, Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey and William D. Sutton.

WILLIAM V. ROSENKRANS,
ROSENKRANS & ROSENKRANS,
Attorneys for Rosenkrans, et als.,
5 Colt Street, Paterson, New Jersey.

CAROL C. JOHNSON,
68 Williams St., New York City, N. Y.
Defendant.

ERRATA IN THE PETITION AND BRIEF. FOR THE OMISSIONS PLEASE USE THE PRINTED INDEX.

1. On page 2, last 4th line should read: page 348;

2. The second omission on last 3rd line should read: pages 348-349;

3. And the last omission on same page should read: pages 350-351.

4. On page 24, last paragraph, on line 2, reads: I am now moving to dismiss the courts (etc.). Should read: I am now moving to dismiss the Counts on which our motions were sustained.

5. On page 31 the 14th line is a double of the 15th.

6. On page 54, paragraph 5th, the T. should be S. as it reads on the top of the page.

7. On page 59, 2d paragraph, 4th line the omission should read: 133-147.

8. On page 59, paragraph 3, omission found in second line should read: page 134. The Section of the State law is set forth the re.

9. On page 73, paragraph 8, on line 20, the omission is to be found on page 292.

10. On page 74, on the 6th line, the omission is pages 301-308.

11. The omission of page 99, paragraph 2, 3rd line is pages307-308.

12. On page 125, paragraph 4. b. the Ch-- is Ch. Fa.

13. On page 130 Brief, paragraph 10, last line, should read:Ch.E.F.

14. On page 142, in the closing paragraph of the brief on line 7 "motions numbered 1/, 2, and 3) should read: motions numbered 1, 2, and 3.

NOTE---Good printers usually return their job for second reading before they close the job, but these here returned three bills almost in the sum of $800.00 and at the same time obliged me to take my papers direct from them to the Clerk of this Court with out seeing them; and even if I have had seen the mistakes there was no way left open to correct them.

NICHOLAS J. CURTIS PETITIONER.

STATEMENT OF CONTENTS.

1. The Questions which are presented are set out on pages numbered 6-16 beginning on the last part of page 6.

2. Ch. A. B. C. begins at page seventeen (17) and ends at page 19.

3. Ch. D. begins at page 20 and ends at page 33, and on page 22 there is set out the Opinion of the Circuit Court of Appeals Third Circuit on Appeal No. 8027.

4. Ch. E. F. begins at the last part of page 33 and ends at the top of page 40.

5. Ch. G. H. begins at page 40 and ends at first part of page 44.

6. Ch. I. begins at page 44 and ends at page 47.

7. Ch. J. K. L. M. begins at page 47 and ends at page 53.

8. Ch. N. O. begins at last part of page 53 and ends at the end of the same page. The Argument to Ch. N. O. is set out in the Appendix. It begins at page 142 and ends at the first part of page 162.

9. Ch. P. Q. R. S. begins at page 54 and ends at the top of page 58.

10. Ch. T. begins at page 58 and ends at the top of page 61.

11. Ch. U. Ua. begins at page 61 and ends at page 70.

12. Ch. V. W. begins at page 70 and ends at page 79.

13. Ch. X. begins at page 80 and ends at first part of page 82.

14. Ch. Z. Y. begins at page 82 and ends at page 85.

15. Ch. Za. Zb. begins at page 85 and ends at page 86 with reference to Argument of Ch. N. O.

16. Ch. A. begins at page 86 and ends at page 90.

17. Ch. Ba. Bb. Bc. Bd. begins at page 90 and ends at page 94.

18. Ch. Ca. Da. begins at page 94 and ends at first part of page 95.

19. Ch. Ea. begins at page 95 and ends at first part of page 106.

20. Ch. Fa. begins at 2d part of 106 and ends at page 114; and at page 108 there is again set forth the Opinion of the Circuit Court of Appeals Third Circuit on Appeal No. 8027; and at the last part of page 95 and on to the first part of page 99 there is set out in full the text of the first Motion (Demurrer) filed in Civil No. 728 on behalf of the therein named defendants. Demurrer (Motion) duly considered by Judge Thomas Glynn Walker, D. J.; U. S. D. Ct. Dist. N. J.

21. The Petition for Writ of Certiorari ends at page 115.

22. Petitioner's Certificate is set forth on pages 115-116; and is followed by his verification which is set forth on pages 116-117.

23. The Petitioner's Notices to the Respondents is set out on page 118.

24. The Petitioner's Brief begins at page 119 and ends at page 142.

25. The Questions Presented are set out on pages 119-123.

26. The Argument to Ch. N. O. begins at page 142 and ends at page 162.

27. At the end of page 162 the Commercial Union of America, Inc. v. Agle South American Bank, Ltd., 10 F. 2d 937 begins and ends at page 172.

28. At the last part of page 172 begins the case of Hyde and Schnieder v. United States and ends at first part of page 187.

At the 2d part of page 187 begins the case of Brown v. Elliot and ends at page 190. The Case of United States v. Kissel is quoted in the case of Hyde and Schnieder.

29. At the last part of page 190 begin the section of the Laws of the United States which are set out in full and end at page 196.

30. The bodies or texts of the three (3) motions upon which Judge Guy L. Fake based his Opinion are set out in full in pages numbered 82-85.

NICHOLAS J. CURTIS, LL. B.,
Petitioner.

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Honolds Supreme Court Law 1567

IN THE

SUPREME COURT OF THE UNITED STATES.

WASHINGTON, D. C.

October Term, 1945.

No. .....

NICHOLAS J. CURTIS,

Petitioner,

vs.

UTAH FUEL COMPANY, a corporation, et als.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS THIRD CIRCUIT; APPENDIX AND SMALL BRIEF IN SUPPORT OF THE PETITION.

(Curtis v. Utah Fuel Company, Civil No. 728, Walker, D. J. D. C. N. J., 2 Fed. R. D. 570, 571, 572; Curtis v. Utah Fuel Company, C.C.A. N. J., 132 F. 2d 321; Curtis v. Utah

Fuel Company, N. J. 63 S. Ct. 993, 318 U. S. 789, 87 L. Ed. 1156 den'g cert. 132 F. 2d 321, Aff'g 2 F. R. D. 570; Ex parte: In the matter of Nicholas J. Curtis, Petitioner, (No. .... Original). Motion for leave to file petition for Mandate. March 9, 1925. Denied. 2 45 S. Ct. 353, 267 U. S. 582, 69 L. Ed. 798. Mem. The Opinions, Judgments and Decree involved in the present proceeding are not listed above.)

NICHOLAS J. CURTIS, LL.B.,
Petitioner Appearing pro se,
No. 145 N. Broad Street,
Trenton 8, New Jersey.

TO THE HONORABLE HARLAN FISKE STONE, CHIEF JUSTICE OF THE UNITED STATES, AND THE ASSOCIATED JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Petition of Nicholas J. Curtis, LL.B., respectfully prays for a Writ of Certiorari to the Circuit Court of Appeals within and for the Third Circuit to review the second Opinion of said court rendered the 5th day of March, A. D. 1945, and Order made and entered thereon on the same date, and its Final Judgment entered on the twentieth day of March, 1945.

The Opinion sought to be reviewed is (Nicholas J. Curtis v. Utah Fuel Company, et als.) in the Record herein page ..... The Order made and entered thereon is in the Record herein page ..... And the Final Judgment (Mandate) on said Opinion and Order sought to be reviewed is Curtis v. Utah Fuel Co. in the Record herein pages .....

The Mandate of the Circuit Court of Appeals finally settled whatever was before the Court. Honold Supreme Court Law, page 1567.

Sibbald v. United States Peters 12, U. S. Book 9; Ex parte Union Steam Boat Co., 178 U. S. 317, 20 S. C. 904, 44 L. Ed. 1084; Perkins v. Furnigue, 14 How. 328, 220, 14 L. Ed. 441, 442; Milwaukee & M. R. Co. v. Southern, 2 Wal. 40, 443, 17 L. Ed. 860, 861; Boyce v. Grundy, 9 Pet. 275, 9 L. Ed. 127; Ex Dubugue & P. R. Co. v. Litchfeld, 1 Wall. 69, 17 L. Ed. 514; Durant v. Essex Co., 101 U. S. 555, 25 L. Ed. 961; City Bank v. Hunter, 152 U. S. 512, 14 S. Ct. 675, 38 L. Ed. 246, 14 S. Ct. 804; Re Sanford Fork & Tool Co., 160 U. S. 247, 16 S. Ct. 291, 40 L. Ed. 414; Re Potts (Re C. & A. Potts & Co.), 166 U. S. 263, 17 S. Ct. 520, 41 L. Ed. 994.

This Court has jurisdiction to review said decision under section 240 of the Judicial Code (28 U.S.C.A. Sec. 347): To-wit:

UNITED STATES CODE 1941. Title 28—Judicial Code and Judiciary Sec. 347. (Judicial Code, Section 240 (a)).

In any case, civil or criminal, in a Circuit Court of Appeals, . . . it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto; whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted appeal. Gray v. Powell, 314 U. S. 406, 86 L. Ed. 307, 62 S. C. 330; Ex Parte Richard Quirin, 317 U. S. 18, 87 L. Ed. 7, 63 S. Ct. 3; Exker v. Western Pacific R. Corp., 318 U. S. 489, 87 L. Ed. 940, 63 S. Ct. 694; United States v. Bankers Trust Co., 294 U. S. 240, 294, 295, 79 L. Ed. 885.

In any such case as is hereinbefore made final in the Circuit Court of Appeals, it shall be competent for the Supreme Court to require by certiorari or otherwise, any such case to be certified to the Supreme Court for its review and determination with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court. Rose's Code of Federal Procedure, Vol. 1, Section 14. Citing: Part of Sec. 6 Act Mar. 3, 1891, Chap. 517, 26 Stat. 826, U. S. Comp. Stat. 1901; And Sec. 129, set forth on page 2 of the Appendix to the Rules of this Court, to-wit: Where, upon a hearing in a district court, or by a judge thereof in vacation, an injunction is granted, continued, modified, refused, . . . an appeal may be taken from such interlocutory order or decree to the circuit court of appeals; and sections 239 and 240 shall apply to such cases in the circuit courts of appeals as to other cases therein: Provided, That the appeal to the circuit court of appeals must be applied for within thirty days from the entry of such order or decree, . . . The appeal to the circuit court of appeals was applied for within thirty days from the entry of the Opinion and Orders made and entered thereon (pages 307-308; 326-327 Record).

UNITED STATES CONSTITUTION and

The Statutes involved are:

Jurisdiction founded on the existence of several Federal Questions and amount in controversy; Also under the Civil Rights Act and Sections enumerated hereafter of Title 15 U.S.C.A. The Articles of the United States Constitution involved are: Article I, Section 9, Subd. 2; Art. III, Section 2; The Amendments to the Constitution of the United States, Amendments IV, V, VI, VIII and XIV; U.S. C.A. Title 8, Ch. 3, Sections 41, 43, 47 (2), (3); Title 15, U.S.C.A. Sections 1, 2, 3, 4, 5, 15, 24, 26; Title 28, U.S.C.A. Sections 103, 725, and 729; Section 41 (1) (8), (12), (14),

(17), (23) of Title 28 U.S.C.A. See page 3 of Complaint. Also Under the Constitution and Statutes of the State of Utah. The Constitution of the State of Utah. Article 1, Section 1; Article 1, Section 5; Article 1, Section 8c.; Article 1, Section 9; Article 1, Section 11e; Article 1, sec. 12 (page 91 of Complaint). Set out in full; Article 1, Section 14; Article 1, Section 26; Revised Statutes of Utah. Conspiracy. Ch. 11. (1), (2), (3), (4), (5); (page 92 of Complaint). Set out in full. Revised Statute of Utah: title 49. 49-6-1. Vice Principal Defined; Title 103. 103-1-3. Penal Code. Chapter 1. (1), (2), (3), (4), (5) (pages 90-91); Title 42. Industrial Commission. R. S. Of Ut. 1933. See pages: 44-45, 46, 47, 48, 49 and on to page 90, of the Complaint; * * * * 42-1-38. Id. Each Day's Default a Separate Offense. * * * * Every day during which any person fails .... to perform any duty imposed by this title shall constitute a separate and distinct offense. (C. L. 17, Sec. 3093.) * * * * 42-1-57. RIGHT TO COMPENSATION—Exclusive Remedy. Exception. * * * * (pages 48-49 of Complaint.... ; provided that where the injury is caused by the employer's willful misconduct and the act causing such injury is the personal act of the employer himself, or, if the employer is a .... corporation, of an elective officer or officers thereof, and such act indicates a willful disregard of the life, limb or bodily safety of employees, such injured employee (* * * *) or other person damaged (* * * *) may, at his option, either claim compensation under this title or maintain an action at law for damages (page 49 Declaration).

"This is an action on the case setting forth a malicious conspiracy or confederation with the means employed to effect its purpose and the resulting damages to the plaintiff in the district court and petitioner here. The basis of the action are as stated in the Declaration the fraudulent and malicious acts of the defendants in ruining the plaintiff

in the court below and petitioner here; and in driving him out from State to State aiming to force him to deportation out of the United States; the proceedings and statements of the means used to effect this purpose all combine to produce a single cause of action. Van Horn v. Van Horn, 24 Vroom 514 (New Jersey; Kamm, Inc. vs. Flint, et als., 175 Atl. 62.

The determination of this cause depends upon the principles of law governing conspiracy and that in view of the conflicting decisions of the lower courts and the numerous cases under the conspiracy statutes of the United States, the cause is of vital importance as to the petitioner herein as well as the United States (pages ..... Record) and its citizens thereof, and that the principles upon which the cause depends be definitely settled by this court.

It will be observed that the Declaration charges that the conspiracy was formed in the State of Utah and that certain of the overt acts were performed there and others in the District of Columbia; and others in the state of Utah; and others in the States of New Jersey and New York. The conspiracy has now flared-up every where (see pages ..... Record).

A part of the Statutes involved are set out in the Appendix herein in full at pages 190-196 of this Petition.

THE QUESTIONS WHICH ARE PRESENTED FOR THE SUPREME COURT'S CONSIDERATION ARE THE FOLLOWING:

A.

The first question, therefore, is presented as to the venue in conspiracy cases, brought under the authority of Ch. 3

of Title 8 U.S.C.A. Sections 41, 43, and 47; and Title 15, Sections 15 and 26 U.S.C.A.; whether it must be in the State of Utah where the conspiracy was entered into or whether it should be in the State of New Jersey wherein numerous overt acts have been and continuously are committed.

B.

Whether the plaintiff in the district court and petitioner here erred in complying with the provisions of the Opinion of the United States District Court District of Utah adjudging and directing the petitioner herein to sue the Utah Fuel Company in the District Court of the United States for the District of New Jersey on the ground and for the reason that he was, and is, an alien, that is a citizen and subject of the Kingdom of Greece.

C.

Whether the plaintiff below and petitioner here neglected to bring his suit timely or whether he was and still is impeded and obstructed of and from doing so.

D.

Whether the Statute of Limitations of the State of Utah applies to and govern the conspiracy set forth in the twenty-five Counts of the Declaration or the cause is governed by the rule of law enunciated in United States v. Kissel, 218 U. S. 601; and applied in the case of Hyde and Schneider v. United States, 225 U. S. 347; and Brown v. Elliott..... (pages 72-187 Hyde cas.; 187-190 Brown cas. Appendix here)

E.

Whether the conspiracy set forth in the twenty-five Counts of the Declaration as supplemented by the Bill on the equity side of the Court No. 2800 and additional Affidavits thereto is governed by the inhibition of the law found in section 112 of Title 28 U.S.C.A. or it is governed by the authority of the cases just cited above Q. Pre-D.

F.

Whether the proceeding here bring up before this Court a cause coming on under the general jurisdictional rule of the district court or is a cause whose jurisdiction was predicated upon the inhibition of the laws found in chapter 3 of Title 8, Sections 41, 43, 47 (2), (3), and Sections 15 and 26 of Title 15 U.S.C.A.; and therefore within the inhibition of the law found in R. S. Sec. 722 (729 U.S.C.A. Title 28); and Section 103 of Title 28 U.S.C.A.

G.

Whether the defendants in the district court were accorded their statutory rights and privileges by giving to them every opportunity to present their defenses by appearing and presenting to the court the truth of their side of the cause.

H.

Whether the sum or value of the matter in controversy is material as to those parties co-defendants or, co-conspira-

tors, residents of the State of New Jersey and citizens of the United States.

I.

Whether the clause "against any one or more of the conspirators" in Sec. 47 (3) U.S.C.A. and Section 43 Tit. 8 means that that is a statutory privilege given to plaintiff to bring his suit against more than one of his joint wrong doers.

J.

Whether district judge Thomas Glynn Walker had not fully considered and deliberately decided motions numbered 1, 2, 3, and 4 (Rulings pp. 352-356 Record; 2 F. R. D. 570-571).

K.

Whether the said decision was not a controlling precedent in every other hearing before any other district judge of the same court sitting in the same case; and whether Rulings on Motion No. 4 were not of equal effect as those on motions Nos. 1, 2, and 3. And

L.

Whether the said decision was subject to be reviewed, overruled and destroyed by Judge Guy L. Fake of the same court.

M.

Whether when Judge Thomas G. Walker denied the motion of the defendant Utah Fuel Company to dismiss complaint his decision was not the law of the case as established in District Court and should have been treated by any other judge sitting in same case? And

N.

Whether on appeal to circuit court of appeals 3rd circuit No. 8027 the rulings of Judge Thomas G. Walker on motions numbered 1, 2, 3, and 4 did not become the matters and things adjudicated or res judicata or the law of the case? And

O.

Whether the ruling of this Court on petition for writ of certiorari (63 S. Ct. 993, 318 U. S. 789, 87 L. Ed. 1156) in substance affirmed the judgment of the Courts below?

P.

Whether the defendant (Utah Fuel Company) in the district court have had complied with the requirements (F. R. 12 (a) (1). If the court denies the motion . . . the responsive pleading may be served within 10 days after notice of the courts action.)

Q.

Whether having failed to file any responsive pleading or answer, the said defendant have suffered itself to an application and entry of default against it? And

R.

Whether under the state of facts, the status of the cause at that time, the application for the default of said defendant was justly and lawfully entered?

S.

Whether under the state of facts set forth in the record, an injunction restraining the conspirators involved in the conspiracy of and from carrying on the conspiracy set forth in the two complaints is not an absolute necessity and therefore justifiable; or the petitioner herein is to cross his hands or arms, remain inactive and permit the conspirators to carry on?

T.

Whether the motion for Decree on Mandate and on the default of the defendant Utah Fuel Company was justly and legally made and presented by the plaintiff below and petitioner here?

U.

Whether the facts set forth in the assignment of errors to the District Court and in the Proceedings under Judicial Code Sec. 21 (As amended by Act of August 24, 1937, Ch. 754, 50 Stat. 751, Sec. 13; p. 2, S. Ct. R's.) are sufficient in law disqualifying Judge Guy L. Fake from proceeding any further in the matter or cause? And U.a.

Whether Judge Fake assumed unwarranted and exclusive jurisdiction of the plaintiff's cause to destroy it while plaintiff and defendant reside in the Division of Trenton five and seven city blocks from the Federal Court House at Trenton, N. J.?

V.

Whether the defendants in civil No. 2800 were accorded their statutory rights to appear and answer and elected to try the suit for injunction on their motions to dismiss it?

W.

Whether motion number 1 as filed by counsel for Utah Fuel Company is the only motion permitted by Federal Rule 12 of the Federal Rules of Civil Procedure for the District Courts of the United States?

X.

Whether Judge Guy L. Fake did not deprive the district court of its jurisdiction when he called before him H. Collin

Minton, Jr., Counsel pro se, Utah Fuel Company et als and in open Court conspired with him and ordered and directed him to proceed and file his second motion to dismiss and for injunction and to destroy the plaintiff and his cause notwithstanding the previous decisions of the: 1. District Court; 2. Circuit Court of Appeals; and 3. This Court?

Y.

Whether paragraphs 1, 2, and 3 of the Opinion of Judge Guy L. Fake are supported by the basic grounds set forth in the first three Motions filed in Civil No. 2800? Or

Z.

Whether these said paragraphs are the judge's malicious imaginations based upon the fourth and only motion which he directed to be made and presented to him and to be watched to come up before him "because no other judge will hear you" for and in consideration of the sums offered to him by said counsel in open court (the amount involved)?

Za.

Whether the Companion Case Rule applies to and governs the suit on the Equity side of the Court for injunction and makes the Counts sustained by the rulings of Judge Thomas Glynn Walker applicable to the suit in equity?

Zb.

Whether the bill as filed on the equity side of the court is open to amendment if thought necessary?

Aa.

Whether the Utah Fuel Company's Motion for injunction and the Exhibits attached thereto, gathered from the States of Utah, New Jersey and New York and the District of Columbia, whereat overt acts in furtherance of the object of the conspiracy were committed, constitute adoption or ratification of every wrong committed in furtherance of the object of the conspiracy (Cooley on Torts, Sec. 76)?

Ba.

Whether the fact that the petitioner herein gave unto the defendant, Utah Fuel Company, his resignation of his compulsory assumption of the office or job of interpreter, legal local agent with "jurisdiction" over all cases between employer and employees, and refused to reassume or resume it when he was ordered by the officials of said defendant company, constitutes the said defendant's motive or reason for instituting the conspiracy set forth in the Record of the cause to destroy the petitioner herein and its former legal local agent at Clear Creek, Utah?

Bb.

Whether the defendant Utah Fuel Company and its contract doctors were motivated to refuse to the brother of

this petitioner hospitalization; the needed medical treatment and operation; pronounce him tubercular and incurable; and to put him out of its General Hospital thereby forcing the petitioner herein to remove his brother to private hospital and to bear all expenses of medical treatment and operation, hospitalization, and convalescent means to restore him to his normal health because of the petitioner's unwillingness to bear his share of the brunt of the said defendant's operations?

Ca.

Whether the plaintiff in the district court, appellant in the C. C. A. 3rd C. and petitioner here have had timely appealed from the Opinion and Orders signed and entered thereon, the Judgment of the District Court)?

Da.

Whether the appellant on appeal to the Circuit Court of Appeals Third Circuit fully and truly presented the issues in the cause to the said Court; and whether the said Circuit Court failed and neglected to adjudicate the issues so presented not with standing the fact that the appellees and their counsels failed to appear and argue their defense?

Ea.

Whether there is a conflict of decisions in the district court between the decision of Judge Thomas Glynn Walker and that of Judge Guy L. Fake in the same cause on the same facts, pleadings and Exhibits?

Fa.

Whether the Circuit Court of Appeals Third Circuit, in affirming the judgment of the District Court, is, or, is not:

a. In conflict with its own decision on appeal No. 8027, on substantially the same facts, between the same parties?

b. In conflict with the determination on application for writ of certiorari (63 S. Ct. 993, 318 U. S. 789, 87 L. Ed. 1156)?

c. In conflict with the decisions of every other circuit court of appeals of the United States?

d. In conflict with applicable decisions of this Court?

e. In conflict with the decisions of the district court in the same case, between the same parties, and substantially the same facts?

f. Whether it has decided important questions of Federal law in a way probable untenable or in conflict with the weight of authority?

g. Whether it has decided important questions of Federal law in a way probable in conflict with applicable decisions of this Court.

h. Whether it has so far departed from the accepted and usual course of judicial proceedings, or has so far sanctioned such a departure by the district court as in the judgment of this Court calls for the exercise by it of its powers of supervision.

1. CH. A. B. C.

A. The first question, therefore, is presented as to the venue in conspiracy cases, brought under the authority of Ch. 3 of Title 8 U.S.C.A. Sections 41, 43, and 47; and Title 15, Sections 15 and 26 U.S.C.A.; whether it must be in the State of Utah where the conspiracy was entered into or whether it should be in the State of New Jersey wherein numerous overt acts have been and continuously are committed?

B. Whether the plaintiff in the district court and petitioner here erred in complying with the provision of the Opinion of the United States District Court District of Utah adjudging and directing the petitioner herein to sue the Utah Fuel Company in the District Court of the United States for the District of New Jersey on the ground and for the reason that he was, and is, an alien, that is a citizen and subject of the Kingdom of Greece?

C. Whether the plaintiff below and petitioner here neglected to bring his suit timely or whether he was and still is impeded and obstructed of and from doing so?

REASONS FOR GRANTING THE PETITION.

Reasons A, B, C, D. These Reasons parallel and cover The Questions Presented.

1. This is an action on the case setting forth a malicious conspiracy or confederation with the means employed to effect its purpose and the resulting damages to the plaintiff in the district court and petitioner here. The basis of the

action are as stated in the Declaration, the fraudulent and malicious acts of the defendants in ruining the plaintiff; and in driving him out from State to State aiming to force him to submit to the object of the conspiracy.

2. The suit was first filed in the United States District Court for the District of Utah as No. 5547. In substance this said Court held that because and for the reason that the plaintiff was an alien and the Utah Fuel Company a corporation incorporated under the laws of the State of New Jersey, the suit should be brought in the District of New Jersey of which the defendant is an inhabitant and citizen on the authority of the case of Campbell v. Duluth.

3. The plaintiff felt himself aggrieved by the Opinion of said federal court because the said defendant-company is a powerful corporation and, directly and indirectly, owns almost the entire coal fields and coal mines in the State of Utah. Plaintiff also felt that the suit was then under the civil rights acts because he was then denied civil rights and it was so stated or held by Judge Johnson while on the Bench hearing the argument and ruling and stating to the defendants and their counsels that the suit was one under section 47 of Title 8 U.S.C.A.

4. The conduct of parties defendants in the suit and their counsels evidenced that the plaintiff have had no right to be or reside in Salt Lake City. Plaintiff appealed to Judge Johnson at his summer residence at Ogden Canyon, Utah but, all in vain. Thereupon plaintiff left the State of Utah and came to Washington, D. C. Here he presented his petition for mandate referred to on the caption but the Deputy Clerk refused to accept it. Thereafter he was arrested for refusing to drop the suit against the

said defendant-company et als. Plaintiff a defenseless person in the hands of sinister conspirators. The results? See the Declarations and Record of the cause.

5. The conspiracy was and is carried on with any and all successive overt acts to accomplish its purpose by any and all means money can buy. There was no let go in a single day during the life of said conspiracy, but with the assistance of the Office of Industrial Commission of Utah the plaintiff succeeded in establishing the merits of which the cause originated. See the Appendix to the Declaration. The conspiracy has barricaded and the record and exhibits show that it still barricades the District Court of the United States for the District of New Jersey ever since the year 1927, and the State Courts ever since the year 1925. The cause became notorious crime and the sinister conspirators are at it just the same. See the Record and Exhibits.

6. The venue of the cause has been established by the conspirators themselves. See United States v. Kissel; Hyde v. Shine; Brown v. Elliott; and Hyde and Schneider v. United States (pages 72-190 Appendix here).

7. The procedural Statute of the United States applying to and governing the cause is that provided by the law found in Revised Statute Sec. 722 (729 Tit. 28 U.S.C.A., 28 U.S.C.A. 729).

2. CH. D.

D. Whether the Statute of Limitations of the State of Utah applies to and govern the conspiracy set forth in the

twenty-five Counts of the Declaration or the cause is governed by the rule of law enunciated in United States v. Kissel, 218 U. S. 601, and applied in the case of Hyde and Schneider v. United States, 225 U. S. 347; and Brown v. Elliot, pages of the Appendix here?

(D). THE STATUTE OF LIMITATIONS PLEADED BY THE RESPONDENT UTAH FUEL COMPANY (pages 315-316 Record).

1. The respondent-company, by its officer and agent, H. Collin Minton, Jr., as its general counsel in charge of its business in the State of New Jersey, and in the capacity of General Counsel in the suit of the petitioner herein, and while the first suit against it (L-5773 U. S. D. Ct. D. of New Jersey) proceeding under color and cover of the Statutes and proceedings involved in the case of the State of Utah (43 U.S.C.A. Tit. 8) and with intent of depriving this petitioner of and from the right to sue the said respondent; by the only party in the suit, give evidence against its co-conspirators, and to receive the full and equal benefits of the laws involved and proceedings had for the security of his person and property (41 U.S.C.A. Tit. 8); and intending to deter, by intimidation or, and threats the petitioner herein from attending the district court of the United States for the District of New Jersey; and from testifying to the matters pending therein against it, and with intent and for the purpose of impeding, hindering, obstructing and defeating in every manner the due course of justice in the said court of the United States (47 U.S.C.A. 8) (page Appendix) appeared before Hon. Phillip Forman, U. S. D. J. sitting as a court in the hearing of motions and proceeding therebefore, to-wit: We hold

that he is not well yet, . . . He suffered enough. All we want at this time is to dismiss this suit and allow him to go on (23rd and 24th Counts of Declaration, pages 33-34) and the further threat to the Court, to-wit: No, we will bring the Attorney General of the State of Utah to help us. Thus he obstructed the administration of justice by the said court and impeded the adjudication of the conspiracy.

2. The present Declaration (728 U. S. D. Ct. N. J.) was filed January 12, 1940. The respondent-company and its attorney were served with summonses and copy of Declaration upon each one of them. Appearing therein they filed a general demurrer to the declaration (pages 5-6-7-8 Record) to the 1st, 2d, paragraphs 36 to 39, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 23rd, 24th and 25th Counts. Responding to this said Demurrer, the petitioner herein filed an Opposing Affidavit (pages 8 to 45 Record).

3. A similar demurrer (pages 45, 46, 47 Record) including the statute of Limitation, was filed by Addison P. Rosenkrans as counsel for the parties defendants citizens and residents of the State of New Jersey and pleading, together with other defenses, the sum or value of the matter in controversy; to which demurrer (or motion) the petitioner herein responded by filing his Opposing Affidavit (pages ½ of page 47 to 62 and nine Supporting Affidavits (pages 63-72 Record).

4. A similar Demurrer was filed by Carol C. Johnson, 68 William Street, N. Y. (pages 83 to ½ of 86 Record), to which demurrer the petitioner herein filed an Opposing Affidavit (pages ½ of 86 to 108 Record).

5. Petitioner herein, being anxious to adjudicate the conspiracy, on the 13 day of May, 1940, filed Notice of Motion for Commission, and written Interrogatories to take the depositions of witnesses who have first hand knowledge of the criminal conspiracy now before the Court; at the same time and in proper form and appropriate proceeding to take depositions of PARTIES AND WITNESSES RESIDING IN the State of Utah who openly operated the conspiracy for years, and offering to advance the costs for taking the same. Decision Reserved. (WALKER.) These matters are thus held up by the said district court.

6. On November 19, 1941, a Memorandum of Finding of Facts and Conclusions of Law (pages 18, 19, 20, 21, and 2/3rds of page 22 of the Bill in Equity for Injunction; and pages 352-356 Record) was entered by District Judge Thomas Glynn Walker, from which appeal No. 8027, C.C.A. 3rd C. was taken, in so far as to those defendants discharged by Judge Walker; on which appeal the said C.C.A. 3rd C. entered the following Opinion, to-wit: Before MARIS, JONES AND GOODRICH, CIRCUIT JUDGES PER CURIAM:

For the reasons sufficiently set forth in the memorandum opinion of Judge Walker filed November 19, 1941, the orders of the district court from which the plaintiff has appealed are affirmed.

A true Copy: Teste:

Clerk of the United States Circuit Court of Appeals for the Third Circuit (pages Record); before Mandate issued and/or, final judgment, and laboring under the provisions of Rule 38 of the said circuit court, the petitioner herein applied to this Court for Writ of Certiorari (No. 779) to be issued to said circuit court; the reported case

shows that this Court affirmed the Opinion of the said circuit court of appeals.

7. Notwithstanding the judgments and decrees of the Courts, the said respondent-company failed and neglected to file its responsive pleading (Fed. Rule 12 (a) (1)) or to apply to the court for relief from the determination of Judge Walker and thereupon the petitioner herein applied for default (pages 275-280 Record) and decree pro confesso

8. The petitioner herein have had enough injustice done to him before Judge Guy L. Fake and he was positive of the fact that said judge will proceed and destroy the cause thus adjudicated and the petitioner himself (pages 39th; 40th; 43rd; 45th of the Rephotostated Exhibits attached to the respondent's motion for injunction). For the foregoing reasons the petitioner herein applied to the circuit court of appeals 3rd circuit by petition (No. 8397) for designation or assignment of a district judge to proceed to final judgment. The cause came on to be heard and argued and while arguing his cause the Court insisted that Judge Guy L. Fake was the Senior Circuit Judge within the meaning of Sec. 24 (Judicial Code Sec. 20). Your petitioner herein took an exception to the ruling of said court and theretofore he was warned to the effect that there are no exceptions allowed in that court and dismissed the proceedings.

9. Thus the petitioner herein was forced to leave the division of the Court at Trenton, N. J., where he resides going now on his fourth year and to go to the division of said Court at Newark so that Judge Fake may proceed and destroy the cause and the petitioner himself; and thereupon he moved for decree on mandate; and counsel for the

defendant-company moved to dismiss the counts on which Judge Walker sustained their demurrer. Both said motion came on to be heard and argued before Judge Guy L. Fake on the 28th day of June, 1943. Respondent's said motion is not in the Record but it will be supplied if it can be located because the Deputy Clerk at Newark says he cannot find it.

10. On the said hearings, or would have been hearings, the whole proceedings became a mask, because Counsel for the Respondent, Judge and Court were swept to the fatal end of an irresistible of hatred and passion with Judge Guy L. Fake leading the mob. There were no one to correct the wrongs perpetrated by the said Judge and Counsel, H. Collin Minton, Jr., Counsel pro se and for Utah Fuel Company et als.; and there before both of them bursted into statements of exposure of their past and present conducts and activities in their endeavors to destroy the petitioner herein and his cause. Judge Guy L. Fake bursted out first as follows:

Are you going to pay this judgment? A. Mr. Minton. No! I am now moving to dismiss the Courts on which our motions were sustained and then I will move to dismiss his case . . . (confidential) Fake, J. It's a shame to pay a judgment like this. It involves considerable amount of money. He deserves what he is getting. Make the motion and watch it to come up before me because no other judge will hear you. Said counsel interrupting. I will make the motion and watch it to see that it comes up before your honor. Fake, J. That's right, make the motion—we do justice according to what is good for the government. He already has a project under consideration to revolutionize the world. He is a mining engineer of great ability and after so many years in there he came out without a scath.

He is good man. Said counsel interrupting. Good man! He is another Cicero. We are unable to defend this case. Fake, J. You know that he is another Cicero and you want to destroy him, eh? We will see what we can do. Fake, J. I was over there and they were there at Ridgewood and Paterson. I knew all about his case while there and our former President appointed me here to deal with and take care of his case. He is radical. Did you hear the argument he made in the Circuit Court of Appeals on the hearing of his appeal there? And here I hold him incompetent and dismiss his cases. Said Counsel. I was there! We will pay to your honor the full amount involved if you will dismiss his cases. We cannot defend this case. Fake, J. Do not tell me those things here because those fellows back there are here to see what disposition I will make with his case. Said counsel. What? He can't do nothing. He can't go to the Circuit Court of Appeals because he insulted them the last time we were there. He has no place to go. Fake, J. He might go to the Greek Consul in New York and have him come here and bawl us out. Said counsel. There is nothing there. . . . Fake, J. He is upright and if this is cleared he will be in here every day and we will not stand to see him. Said counsel. He cannot practice because he is not a member of the Bar. Fake, J. Yes, but he is a professor and has several cases here. That's all he wants. If he tries them he would not want any more cases. All this is illegal. Watch the lawyers. Watch Weinberger. He might go there. He went there before and did not take his case. At the present status of the case he might take it. Said counsel. He is as good as Weinberger. Fake, J. What? Weinberger is a deceiver and this here is upright. We have him (Weinberger) here and we know him. Make the motion. Said counsel. We will pay the full amount involved into the Fund if you destroy him. Fake, J. What

Fund? A. By said Counsel. There is established a fund for the re-election of the President and we will pay the full amount involved into said Fund if your honor will destroy him. Fake, J. You know more about that than I do. Said counsel. We will pay the full amount involved into the Fund and give the Mormon votes if you do—will destroy him; because he will go back there again and they will not stand to see him there. Fake, J. His farm! A. Yeh. Make the motion. All right. I will make the motion. Judge Fake. He must die in poverty a martyric death because he fights the President. Make the motion. Judge Fake made further statements regarding woman and it is pitiful to hear a judge go off his duties like that (See Proceedings under Judicial Code Sec. 21 pages Record; The Assignment of Errors, pages 287-303 Record; last paragraph of page 8 and on to page 10 of the Brief to Appeal to Circuit Court of Appeals, 3rd Circuit No. 8664; paragraph 4 of petitioner's opposing affidavit, opposing motion to dismiss case pursuant to 104-2-23 R. S. Ut., pages 311-315 Record.

11. CIVIL NO. 2800. Apprehending the consequences of the activities of the defendants and their co-conspirators, and in order that he may safeguard his person, your petitioner herein filed Civil No. 2300 on the Equity side of the Court for Injunction. See the Bill. There is and there was no way out of the hands of the conspirators. Therefore an injunction was and is an absolute necessity. Petitioner does not interfere with the operations of the business of any one of the conspirators or those who take part in the conspiracy; nor is he interferes with the operations of the respondent Utah Fuel Company; and has not and never have had any difference with the laws of the State of Utah.

12. The defendants to the bill, appearing therein, filed three motions (pages 112-113 is the motion of the Utah Fuel

Company; pages 155-157 is the motion of Addison P. Rosenkrans and William V. Rosenkrans; and pages 195-197 is the motion of George Lavdas and Louis Antonopoulos Record. Each one of these motions is opposed by petitioner's Opposing Affidavit. Pages 197-209 Record.

13. In pursuance to the understandings had as aforesaid (paragraph 10 just above) Judge Guy L. Fake failed to take judicial notice of the determinations of every other court in the case; and failed to take notice of the issues made by the pleadings; and the effect of the companion case rule applicable to the suit on the equity side of the Court, but proceeded and handed down an Opinion (pages , Record) dismissing the suit in equity and preparing the way to assist the respondent company and its counsel to dismiss Civil No. 728. To-wit: The allegations against this REMAINING DEFENDANT DISCLOSE ALLEGED CLAIMS WHICH HAVE LONG SINCE BEEN OUTLAWED BY THE Statute of Limitations. However, in the absence of an answer pleading the statute of limitations, the complaint cannot be dismissed at this time.

14. The claim alleged in the First Count owes its origin on contract in force long before the Industrial Act of the State of Utah was enacted. When the said Industrial Act was enacted it adopted the Medical system OF THE RESPONDENT Utah Fuel Company as it was maintained by contributions paid in by the employees. All those contracts in force then became a part of the Industrial Act of the State of Utah (42-1-50 R. S. Ut.) U. S. Constitution, Art. I —Sec. 10.—Powers Denied to the States. Cl. 1—Impairment of Contracts. When the State Supreme Court of the State of Utah has once interpreted those contracts (pages 45-110 of Appendix to the Declaration in Case No. 728),

those interpretations became a part of those contracts (Sauer v. New York, 206 U. S. 536; Muhlker v. New York & H. R. Co., 197 U. S. 544, 570). Furthermore, after the said Industrial Act had been settled by judicial construction of the Courts of the State of Utah, the construction became, so far as contract rights acquired under it are concerned, as much a part of the statute as the text itself, and a change of decision operates as an impairment of the obligation of contract. Douglas v. Pike County, 101 U. S. 677, 687; Louisiana ex rel Southern Bank v. Pilsbury, 105 U. S. 278, 295. Settled judicial construction by the State Courts and the Industrial Commission may be deemed to have been incorporated into those contracts. Chicago v. Sheldon, O. Wall, 50.

15. Summing up the situation of the cause now before the Court will say thus:

a. On or about the 10th day of September, 1927, your petitioner herein removed his brother, Mr. Dan Curtis, from St. Mark's Hospital, Salt Lake City, Utah to Holy Cross Hospital in that city and placed him under the care of Drs. Tindale, Hatch, Middleton, Allen & McHugh and Sister Superior and paid all doctors' and hospital's bills and cared for his brother until he came back to his normal health up to or about the end of said year.

b. In the State of Utah, all courts are open, and every person, for an injury done to him in his person, property or reputation, has remedy by due course of law, which is to be administered without denial or unnecessary delay; and no person can be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party (Constitution of

Utah, Article 1, Section 11. (Courts Open. Redress of injuries.) (41 U.S.C.A. Title 28.)

c. An action upon a contract, obligation or liability not founded upon an instrument in writing; . . . may be commenced at any time within four years after the last charge is made or the last payment is received (104-2-23, R. S. Ut. And again: An action for relief not otherwise provided for must be commenced within four years after the cause of action shall have accrued 104-2-30. Action for Relief Not Provided for. Citing Action on the case within meaning of statute.

d. Your petitioner herein filed his first suit in U. S. Dist. Ct. Dist. of Ut. April 25th, 1919. This would be about one year and five months after he paid up the bills for which the said defendant have had received pay for the same. The said defendant appeared specially and pleaded and insisted:

Comes now Utah Fuel Company, one of the defendants in the above entitled cause . . . only purpose of objecting to and challenging the jurisdiction of above entitled Court over the person of this defendant, and moving to quash, vacate, set aside and annul the service (etc.).

That at the time of the commencement of this suit, and prior thereto, this defendant, Utah Fuel Company, was not, and it is not now, and it never has been a citizen of nor an inhabitant of, nor a resident of, nor did it reside in the District of Utah wherein this suit is brought . . . Utah Fuel Company was, and still is, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, . . . a citizen, resident and inhabitant of the District of New Jersey, . . . and Nicholas J. Curtis was and is an alien, citizen and subject of Kingdom of Greece. . . . Filed May 8, 1919. John W. Christy, Clerk. On 3rd

day of June, 1919, said case was dismissed. (See 45 S. Ct. 353, 267 U. S. 582, 69 L. Ed. 798.) The Petition for Mandate in this Court is printed and the judgment of the Fed. D. Ct. D. of Ut. is embodied and printed in the Record.

e. As for the consequences which followed after the dismissal of said suit see the eighth count of the Declaration. Further, up to April 20, 1924, except few months during the year 1923 when he printed the said Petition for this Court (please see it) and thereupon he was arrested in his home at Salt Lake City, Utah, for proceeding with this matter, he was incarcerated and held for deportation or death; at that time he was deported out of the State of Utah in the custody of one Christ Zavis. Two arrests followed one at Denver, Colo., and one in the District of Columbia but in both places no information was issued and it all appeared that both of them were made to terrorize.

f. In the month of October, 1925, on the trial of a claim for wages in the Paterson District Court, William V. Rosenkrans, attorney for the defendant, exhibited to the Court a copy of the said printed Petition made to this Court and confronted your petitioner with the matters and things set forth therein, the suit against the Utah Fuel Company; on that ground every cent due and unpaid for wages was defrauded (Counts 21st and 22d. Declaration). Ever since then the conspiracy is carried on in the States of New Jersey and New York (E-2331, 1927; E-4129, 1930; E-5109, 1935; L-1722, 1928; L-4628, 1934; L-4659, 1934; L-5773, 1936; Civil 728, 1940; Curtis v. Collis Bros., Bergen County D. Ct., N. J.; Curtis v. Woll, So. D. N. Y.; Curtis v. Peraino, three time these cases, Ridgewood D. Ct. and Bergen County Circuit Court, one case, N. J.; Police Court, Newburgh, N. Y., one case, Police Court Poughkeepsie, N. Y.,

one case; Social Security, three cases.) Each and every one of said causes is the result of overt acts in furtherance of the same and single conspiracy. The Federal District Court dismissed all cases before it on false orders and contrary to the appeals made by your petitioner. Every cent earned, and collected, because good part of it has been defrauded, has been expended in self defense, defending his person and the right to work and earn a living. (See Record, pages 336-340.) District Judge Guy L. Fake, according to his own statements made while on the Bench, has assumed personal jurisdiction since 1929 and insisting to have and to hold it to the end of the life of your petitioner, writing false opinions and signing false orders freely (pages 1 to 5; 8-9-1011; Brief C.C.A. 3rd C. presented as an Exhibit (pages 1 to 5; 8-9-10-11; Brief C. C. A. 3rd C. presented as an Exhibit). He now pleaded or directed to be pleaded in his Opinion, the statute of limitation. The cause now before the Court is not governed or controlled by the Statute of Limitations of the State of Utah because the provisions of that statute were satisfied when the suit was first filed in the U. S. D. Ct. D. of Utah (d) supra (R. S. Ut. Ch. 5. Manner of Commencing Action. 104-5-1. By Filing Complaint or Service of Summons. A civil action shall be commenced by the filing of a complaint with the Clerk of the Court in which the action is brought, or by the service of a summons. (C. L. 17. Sec. 6538.)

g. The Certifications of Dr. Tindale and Dr. Hatch (pages 63-64 Declaration) fully sustain the claim against the defendant Utah Fuel Company.

h. The Judgment of the U. S. District Court for the District of Utah is the law of the case and defendant insisted that it be sued in the U. S. Court in the District of New Jersey, in which it is an inhabitant, citizen and resident

and in order to defeat the Court's jurisdiction it resorted and put in force and operation the conspiracy set forth above and in the Record of the Case.

i. The Statute of Limitations was satisfied when the suit was first filed and became inapplicable to overt acts committed in furtherance of the conspiracy and outside the Territorial limits of the State of Utah.

j. The cause is governed by the rule of law announced by this Court and applied in the cases of U. S. v. Kissel; Hyde and Schneider v. U. S.; Brown v. Elliott (Appendix pages 72-190.

k. Limitation runs only from time of cessation of overt acts, where damages result from consequences of one continuous wrong (Montgomery v. Crun, 161 N. E. 251 (13-16) Limitation of Actions—key 55 (1)—

At page 259. Injury precedes damages. Hence, damages susceptible of ascertainment resulting from injuries to person would ordinarily be the test for determining when a cause of action exists (17 R.C.L. 765), but where as here, "the action is for the damages resulting from the various consequences of one continuous wrong" (Gunder v. Tibbits, 153 Ind. 591, 55 N. E. 762) the statute of limitation will not begin to run until there is a cessation of the overt acts constituting the wrong. (Farneman v. Farneman, 46 Ind. App. 453, 458, 90 N. E. 775, 91 N. E. 968.) The conspiracy charge(s), if proved, is effective to enlarge the group of persons each responsible for the acts of the others, not only in continuing the wrong, but for damages resulting from each other's acts. Eacock v. State, 169 Ind. 488, 498, 82 N. E. 1039; McKee v. State, 111 Ind. 378, 12 N. E. 510.

1. Where a wrongful act result in a recurring or continuing injury, there is a cause of action, not only for the injury consequent upon the original act, but also for such successive ones as may result in the future in which case the statute attaches at the time of the occurrence of the injury." Arkebauer v. Talcon Zinc Co., 12 S. W. 2d 916 (5-6) citing 17 R.C.L. 785; Allison Bartlett v. Grassell Chemical Co., 92 W. Va. 445, 115 S. E. 451, 27 A.L.R. 54.

m. LIMITATIONS. Time from which statute runs in general. A conspiracy continues, so far as the Statute of Limitations is concerned, so long as there is a course of conduct in violation of law to effect its purpose. Ryan v. U. S., 216 F. 13, 132 C.C.A. 257, cer. de. 34 S. Ct. 603, 232 U. S. 726, 58 L. Ed. 816; Overt Acts as Controlling in General.

n. Any act in execution of the original plan may be regarded as a renewal of the original combination, and may be prosecuted against any one participating, personally or through others. U. S. v. Reddin, 193 F. 793.

3. CH. E. F.

E. Whether the conspiracy set forth in the twenty-five Counts of the Declaration as supplemented by the Bill on the Equity side of the Court No. 2800 and additional Affidavits thereto is governed by the inhibition of the law found in section 112 of Title 28 U.S.C.A. or it is governed by the authorities of the cases just cited above (Q. Pre-D.)?

F. Whether the proceeding here bring up before this Court a cause coming on under the general jurisdictional

rule of the district court or is a cause whose jurisdiction was predicated upon the inhibition of the law found in Chapter 3 of Title 8, Sections 41, 43, 47 (2)(3), and Sections 15 and 26 of Title 15 U.S.C.A.; and therefore within the inhibition of the law found in R. S. Sec. 722 (729 U.S.C.A. Title 28); and Section 103 of Title 28 U.S.C.A.; and Sec. 5 of Tit. 15, U.S.C.A.?

1. The case is one of exceptions from the general rule governing the inhibition found in Section 112 of Title 28 U.S.C.A.; and it is governed by the inhibition of the law found in Sections 41, 43, 47 of Title 8 U.S.C.A., and Section 729, Title 28 U.S.C.A.; and also of the inhibition of the law found in Section 103 of the same Title. Reviewing the authorities on the subject there is to be found as follows:

2. In Westor Theatres v. Warner Bros. Pictures, 41 F. Supp. 757, (12) the Court said: The district court's jurisdiction is the creature of the Acts of Congress enacted in pursuance of the Constitution and apart from the powers inherent in a lawfully constituted judicial tribunal. It has no jurisdiction other than that legislatively conferred upon it; (13) citing J. Harvey Ladew, et al. v. Tennessee Copper Company, 218 U. S. 357, 31 S. Ct. 81, 54 L. Ed. 1069.

3. And in the case of Sun Oil Co. v. Burford, 130 F. 2d Headnote 23. Courts key 258. It is therein set forth as follows:

Federal District Courts are given power to receive jurisdiction only by the Federal Constitution, and such jurisdiction is conferred solely by the Congress of the United States. . . . 15. It is true of all civil actions in the federal courts except as otherwise provided by federal statutes or Federal Rules of Civil Procedure 16. (Rule 82 provides:

"These rules shall not be construed to extend or limit the jurisdiction of the district courts of the United States or the venue of actions therein." As to particular remedies provided by State laws, see Rules 4 (d) (2) (7), 64 and 69 of the Federal Rules of Civil Procedure. Act of June 1, 1874, c. 200, 18 Stat. 50, 28 U.S.C.A. Sec. 728; Sections 722, 915, 919, and 933 of the Revised Statutes of United States, 28 U.S.C.A. Secs. 729, 726, 732, 746.

4. 729 U.S.C.A. Title 28; 3 F.R.D. at p. 447.

In respect to many matters not covered by federal statutes, the common law prevails. As to others, state law is followed, at times the law as it existed on the date of the admission of the State into the Union and at times the current state laws. 9. Holmes v. United States, 269 F. 96, 98 (C.C.A. 5th) Scaffidi v. U. S., 37 F. 2d 203, 207 (C.C.A. 1 1930); United States v. Eagan, 30 F. 608 (D.C. E.D. Mo. 1887); United States v. Clune, 62 F. 798; U. S. v. Olmstead, 7 F. 2d 756, 758 (D.C. W.D. Wash. 1925); 28 U.S.C.A. 729.

5. The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of Chapter 3 of Title 8, and Title 18, for the protection of all persons in the United States in their civil rights and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect. Section 729 of Title 28 U.S.C.A. (R. S. Sec. 722). See the section in full on pp. 8-9 of first part of printed record as printed for the C.C.A. 3rd C.

6. The matters set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any establish

prima facie the laws of the United States. U.S.C.A. 1941, Title 1, Section 54 (a); Revised Statutes and Supplements as Evidence of the Law, Act of June 20, 1874, c. 333, Sec. 2, 18 Stat. 113; Act of Mar. 2, 1871, c. 26, 20 Stat. 27; Acts of June 7, 1880, No. 44, 21 Stat. 308; April 9, 1890, c. 73 Sec. 3, 26 Stat. 50.

7. If an act is against the law, it is against the United States, and if against the United States, it is because it is against the laws, and by "laws" is meant "statutory laws." Parker, D. J. in re Walf (D. C.) 27 Fed. 606-611.

8. Federal Law. Law administered in federal courts. (36 C. J.) Law, p. 959, citing Morris-Turner Live Stock Co. v. Director Gen. of Railroads, 266 Fed. 600, 601. See also Fed. Cts. 25 C. J. p. 679.

See and consider subd. (1) last sentence of Sec. 41 of Title 28 U.S.C.A.; Subd. (2); Subd. (12); Subd. (14); Subd. (17); Subd. (23).

U.S.C.A. Title 28, Section 103. When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein. (R. S., Sec. 731; Mar. 3, 1011, c. 231, Section 42.) The Jurisdiction in civil and criminal matters conferred on district court by the provisions of Chapter 3 of Title 8 . . . shall be exercised and enforced in conformity with the laws of the United States.

9. Article I, Sec. 8, paragraph 18 of the United States Constitution, gives Congress power to make all laws which shall be necessary and proper for carrying into execution

the foregoing powers and all other powers vested by the Constitution in the government of the United States or in any department or officer thereof.

Congress, therefore, has authority to make laws necessary and proper to extend the judicial power effectively over such controversies, even when developed in State Courts. Congress is the primary judge of what is necessary and proper. Hoffman v. Lynch, 23 F. 2d 518 (9) page 522. See also U. S. v. American Brewing Co., 1 F. 2d 1001 (2); U. S. v. Hudson, 11 U. S. 32, 7 Cranch 32, 3 L. Ed. 259.

10. "Where a statute (of the United States) creates a new right or offense, and provides a specific remedy or punishment, they alone apply. Such provisions are exclusive. United States F. & Guaranty Co. v. John R. Alley & Co., Inc. et al., 34 F. Supp. 604 (2) quoting: In Barnet v. Muncie Nat. Bank, 98 U. S. 555, 25 L. Ed. 212. Citing Bk. Dearing, 91 U. S. 29.

Where a statute creates a new offense and denounces the penalty, or gives a new right and declares the remedy the punishment or the remedy can be only that which the statute prescribes. Stafford v. Ingersoll, 3 Hill 38; First Nat. Bank of Whitehill v. Lamb, 57 Barb. 429.

The Statutes (Sections 103 and 729 of Title 28 U.S.C.A.) are remedial as well as penal, and are to be liberally construed to effect the object which Congress had in view in enacting them. Gray v. Bennet, 3 Met. 539.

11. Federal Rules of Civil Procedure are not intended to affect the substantive rights of individuals which are fixed by federal statute. Federal Rules of Civil Procedure for the District Courts, rule 82 (d), 28 U.S.C.A. following Sec. 723, U. S. Fidelity & Guaranty Co. v. John R. Alley & Co., 34 F. Supp. 904 (5).

12. In other words, conformity (Sec. 112 of Tit. 28 U.S.C.A.) applies only in the absence of direct Congressional legislation upon the subject, Hughe's Federal Practice, Vol. 6, Ch. 78, Sec. 3562, citing: (Berry v. Mobile & O. R. Co., 228 F. 395) and goes no further than to provide a general rule regulating practice and procedure in the absence of express Congressional enactment on the subject, and does not repeal any previous act of Congress expressly requiring a particular mode of proceeding in any given class of cases (Wear v. Mayer, 6 F. 658-660). See also: American Dig. 2d Dec. Ed. Courts, Sec. 340. Effect of United States Statute Regulating Procedure; 13 Cent. Dig. Courts Sec. 900. 8 U.S.C.A. 47 (2), (3). Obstructing justice key 71.

13. "Administration of justice" means performance of acts or duties required by law in discharge of duty. Rosen v. United States, 10 F. 2d 975. (2) Administration of justice means the "performance of acts or duties required by law in discharge of their duty." Rosen v. U. S. supra citing: Bels v. Lacy (Tex. Civ. App.) 111 S. W. 215.

14. The statutory words "due administration of justice" has been considered from various angles.

15. In Wilder v. United States, 11/3 F. 433, 74 C.C.A. 567, as means free and fair opportunity to learn what any litigant may desire to know concerning the material facts in any litigation. And in 1 C. J. 1239 has adopted from an early case the statement that the administration of justice "includes everything connected with the determination of the rights of persons and property, every agency provided by law for the accomplishment of that purpose, and every step in the proceeding * * * to the established law of the

land" (C. J.) p. 139. Administration of justice. Note 73. State v. Post, 6 Oh. S. & C. P. 200, 206, 4 Oh. N.P. 157 (a). "The term administration of justice is a broad and comprehensive term. It means something more than the mere trail of a cause. It includes everything connected with the determination of the rights of persons and property, every agency provided by law for the accomplishment of that purpose, and every step in the proceeding and process by which such determinations are embodied in a final determination therein, according to the established. State v. Post 6 supra.

(b) "Due administration of justice"—Under a statute making it a criminal offense to corruptly or by threats or force "obstruct or impede the due administration of justice" in any court of the United States, the words "due administration of justice" import a free and fair opportunity to every litigant in a pending cause in a federal court to learn what he may learn (if not obstructed or impeded) concerning material facts and to exercise his option as to introducing testimony as to such facts, and an offense is committed under such statute if a person corruptly endeavors to induce other persons who have knowledge of facts which may be material to a party to a pending cause to conceal or deny their knowledge so as to prevent such party from obtaining knowledge or procuring evidence of such facts, citing the Wilder case supra.

16. FORTY-NINTH CONGRESS. SESS. II, Chap. 137, March 3, 1887. Sec. 1 . . . ; and no civil suit shall be brought before either of said courts (Circuit and District) against any person by any original process of proceeding in any other district than that whereof he is an inhabitant; . . .

Sec. 5. That nothing in this Act shall be held, deemed, or construed to repeal or effect any jurisdiction or right mentioned . . . in seven hundred and twenty-two, . . . of the Revised Statutes of the United States, or mentioned in section eight of the Act of Congress approved March first, eighteen hundred and seventy-five, entitled "An Act to protect all citizens in their civil or legal rights."

4. CH. G. H.

G. Whether the defendants in the district court were accorded their statutory rights and privileges by giving to them every opportunity to present their defenses by appearing and presenting to the court the truth of their side of the cause?

H. Whether the sum or value of the matter in controversy is material as to those parties co-defendants or, coconspirators, residents of the State of New Jersey and citizens of the United States?

1. Reason G. The existence of jurisdiction creates an implication of duty to exercise it (McClelland v. Garland, 217 U. S. 268). The judicial authority of the United States is to be exercised and enforced pursuant to the provisions of the U. S. Const. and the Acts of Congress of the United States and the common law. Id. McClelland v. Garland. The Act of Congress found in R. S. 722 (729 U.S.C.A. 28) is procedural concerning the administration of cases arising under the Civil Rights Acts, Ch. 3 of Tit. 8 and crimes and offenses against the laws of the United States.

2. Cases arising under the Civil Rights Act are to be accorded the procedure accorded to the administration of

the criminal laws of the United States. Rev. Stat. Sec. 722 provide: "The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of Ch. 3 of Tit. 8 and Tit. 18 (pages 8-9 Record). It follows that the defendants were given their statutory opportunity to be heard and to present the truth of their side of the cause, including their Official Records of the places in which they incarcerated the petitioner herein for suing the respondent Utah Fuel Company. See also pages 8-33 Record, and pages 87-108 Record.

3. Any and all statutes (Sec. 5 of Tit. 15 U.S.C.A.) Bringing in additional parties (July 2, 1890, c. 647, Sec. 5, 26 Stat. 210) of the United States which are suitable for carrying into effect the Courts' jurisdiction over the cause are made applicable to and govern the procedure followed in the cause (Rev. Stat. 722 (729 U.S.C.A. 28; 103 U.S.C.A. 28).

4. PROCESS: As it has been said, Congress has the power to regulate the whole process of the Federal Courts. 23 U. S. 51, 6 L. Ed. 264, this Court said:

By the 14th section of the Judiciary Act (2 L.U.S. 62) power is given the Courts of the United States to issue a writ of scire facias, habeas corpus, and all other writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. That . . . summonses are among the writs hereby authorized to be issued, cannot admit of a doubt; they are indispensably necessary for the beneficial exercise of the jurisdiction of the Courts. . . . It doubtless embraces writs sanctioned by the principles and usages of the common law. (377 U.S.C.A. 28.) (R. S. 716; Mar. 3, 1911, c. 231, Sec. 262, 36 Stat. 1162.) (28 U.S.C.A., Sec. 13.) Same:

5. Section 377. (Judicial Code, Section 262.) 28 U.S.C.A. Sec. 377.

Power to issue writs. The Supreme Court, the circuit court of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions and agreeable to the usages and principles of law. Citing the Act supra.

6. Note 64 under said section: Process or summons—Power to issue. Citing: U. S. v. Virginia-Carolina Chemical Co., 163 F. 66.

7. Note 65. Issuance to another district: U. S. Standard Oil Co. of Indiana, 154 F. 722. Where some of the defendants charged with criminal conspiracy in restraint of interstate commerce, are corporations (citizens) of other states, but the conspiracy was in part carried on within a district, and some of the defendants are inhabitants of the district and found there, the court of that district has jurisdiction, and may issue its process to the marshal of other districts, where the nonresident (citizen defendants) corporations may be found and served. U. S. v. National Mallable & Steel Casting Co., 6 F. 2d 40. Preservation of section under Rule 81, Fed. R. Civil Procedure. See Note by Advisory Committee under R. 81. The Section has been preserved.

8. The section was enacted by Congress in order to meet cases where there is no specific process provided by statute. John Gund Brewing Co. v. U. S. 206, Fed.

U. S. v. Fullheart 47 F. 802, quoted from re: Subold, 100 U. S. 871, on page 895 . . . This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to that extent. . . .

9. Bradford et al. v. City of Sumerset, Ky. et al., 138 F. 2d. 308, holding: District Court of United States are given jurisdiction by Title 28 U.S.C.A. Sec. 41 (14) over suits brought under the Civil Rights Act without the allegation or proof of any jurisdictional amount. Hague v. C.I.O., 307 U. S. 496, 59 S. Ct. 954, 83 L. Ed. 1423. In the light of the above decision of the Supreme Court announced subsequent to the order of the District Court in the case, it follows that the trial court had jurisdiction over the suit, without allegation or proof of the jurisdictional amount. See also: Kerr v. Enouch Pratt Free Library, 54 F. Supp. 514, (1), (2), (3).

10. U.S.C.A. 43. Douglas v. Keannett, 319 U. S. 161, 87 L. Ed. 1324, 63 S. Ct. 877. (Headnotes (1), (2): (13) at p. 131.) In any event, an injunction looks to the future. Texas Co. v. Brown, 258 U. S. 466, 475, 66 L. Ed. 721, 725, 42 S. Ct. 375; Standard Oil Co. v. U. S., 283 U. S. 163, 182, 75 L. Ed. 926, 952, 51 S. Ct. 421.

11. Courts 424.—Federal Courts. 1. Allegation and proof that the value of the matter in controversy exceeds $3,000 is unnecessary in a suit in a federal district court, brought under the Civil Rights Act (8 U.S.C.A. 43); Oney et al. v. Oklahoma City et al., 120 F. 2d 861; Viles v. Symes, 129 F. 2d 828; Snowden v. Hughes, 132 F. 476.

12. In O'Sullivan v. Felix, 5 Cir. 194 F. 88, the Court says:

The petitioner predicated jurisdiction upon an alleged cause of action under legislation enacted by Congress during the reconstruction period. (Act April 20, 1871, Ch. 22, Sec. 1, 2, 11 Stat. 13), and now embodied in the U. S. Code

(8 U.S.C.A. Secs. 43-47). The latter section (47) expressly authorizes an action for the recovery of damages. Such an action, unless the claim made is purely colorable, is an action based upon the laws of the United States as to which the federal courts have jurisdiction. O'Sullivan v. Felix, supra, affirmed, 233 U. S. 318, 34 S. Ct. 596, 58 L. Ed. 980; McClaine v. Rankin, 197 U. S. 154, 25 S. Ct. 410, 49 L. Ed. 702, 3 Ann. Cas. 500; Smith v. Kansas City Title & Trust Co., 255 U. S. 180, 41 S. Ct. 243, 65 L. Ed. 577; In re Toburus Parrott, 1 Fed. at p. 520.

5. CH. I.

I. Whether the clause "against any one or more of the conspirators" in Section 47 (3) and Section 43 of Tit. 8 U.S.C.A. means that that is a statutory privilege given to plaintiff to bring his suit against more than one of his joint wrong doers?

REASON I.

1. Rule 20 of the New Federal Rules of Civil Procedure, 28 U. S. C. A. following section 723 governs the situation. In substance, that provides that joinder of parties defendant is permissible if the claim or claims alleged in an action arise out of a series of transactions or occurrences and there is any question of law or fact common to all of them which will arise in the action. This case does arise out of the same series of occurrences and there are a number of common questions of fact and law in issue. Goddard, D. J. in McNally v. Simons et al., D. C. S. D. N. Y. See pp. 12, 13, and 14. Printed Parts of the Record.

2. Yes, the defendants in the suit were properly joined. Joint Tort Feasors—May be joint. Brown v. Southern Pacific Co., 31 U. 318, 88 P. 7;

3. R. S. of Ut. 104-3-13. Id. Defendants. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein;

4. Fraud.—Of all parties to fraud. White v. Texas Co., 202 P. 826, 59 U. 180;
Criminal.—All guilty. State v. Morgan, 22 U. 162, 61 P. 527; State v. King, 24 U. 482, 68 P. 418;

5. Cheating of property.—Statute includes real estate as well as personal property. State v. Blake, 105 P. 910, 36 U. 605;

6. "Torts".—Actions properly joined which arise out of continuous, official acts. Wilson v. Sullivan, 17 U. 341, 53 P. 14;

7. Several causes of action arising out of injuries with or without force to person and property of either may be joined. Thomas v. Bythe, 44 U. 1, 137 P. 396;
Continuous tortious acts may be combined to avoid multiplicity of suits. Willson v. Sullivan, 17 U. 341, 53 P. 994;

8. Acts which constitute but a single wrong may be commingled even though, if separately stated, different defenses would apply. Reese v. Qualtrough, 48 U. 23, 156 P. 955. In this case the Supreme Court of the State of Utah says:

There is no reason whatever why the complaint should not be held good. Where facts are commingled in a complaint so that, if they were separated, different defenses would apply, or where a defendant might have a good defense to a certain group of facts constituting a cause of action which he does not have to all the facts as they are commingled in the complaint, the courts do not hesitate to require the plaintiff to separate the facts into separate causes of action so as to permit the defendants to intelligently meet all the matters set forth in the complaint. Where, as in this case, however, the wrongful acts complained of are of such a character, and are so numerous and continuous and so blended together, that in legal effect they constitute but a single wrong or transaction, a segregation will not be required. If, under such circumstances, segregation were required, then the acts of each day would have to be stated separately as constituting separate and independent wrongs and causes of action. Please see the case as reported. See also Joint Wrongs. Cooley on Torts, Vol. 1, Ch. V. p. 223, and cases cited thereunder.

9. Perjury and its subornation have been defined and considered as part and parcel of the same offense. 3 Coke Institutes 167; 2 Bishop Criminal Laws Secs. 1056, 1197. They were treated as such by the Congress in the Act of April 3, 1790, Ch. 9, Sec. 18, 1 Stat. 116. Their separation into two cognate sections in subsequent revisions of this original statute, 18 U.S.C.A. Secs. 231, 232, hardly import a difference in substance. Any general distinction between perpetration and procurement (. . .) no longer obtains. 18 U.S.C.A. Sec. 550. Clark, C. J. in Re United States v. Silverman, C.C.A. Third Circuit, Sept. 7, 1939. 106 F. 2d. 75.

See also the following cases and cases in point:

Ruthenberg v. United States, 245 U. S. 480, 483, 38 S. Ct. 168, 62 L. Ed. 414;

United States v. Bakes, C.C.A. 7th C. 107 F. 2d. 579, (6);

Pon Wing Quong v. U. S., C.C.A. 9th C., April, 1940, 111 F. 2d. 257;

Backun v. United States, C.C.A. 4th C., June 10, 1940, 112 F. 2d. 635;

United Cigar Whelan Stores Corp. et al. v. United States, 113 F. 2d. 340;

United States v. Hodorowicz, C.C.A. 7th C. 105 F. 2d. 218 (7);

Page v. United States, C.C.A. 5th C., 94 F. 2d. 591, (4);

Robinson et al. v. United States, 94 F. 2d. 752, (2), (3), (4);

Schrader v. United States, C.C.A. 8th C., 94 F. 2d. 926 (1);

Alexander v. United States and 3 others, C.C.A. 8th C., 95 F. 2d. 875;

Ginsberg v. United States, C.C.A. 5th C., 96 F. 2d. 433, (13);

What is done and said by co-conspirators in execution of their enterprise is admissible against all. Cr. Code Sec. 332, 18 U.S.C.A. Sec. 550.

6. CH. J, K, L, M.

J. Whether District Judge Thomas Glynn Walker had not fully considered and deliberately decided motions numbered 1, 2, 3 and 4 (Rulings, pages , Record; 17-22 Bill in Equity; 2 F.R.D. 570-571)?

K. Whether the said decision was not a controlling precedent in every other hearing before any other district judge

of the same court sitting in the same case; and whether Rulings on Motion No. 4 were not of equal effect as those on motions Nos. 1, 2, and 3? And

L. Whether the said decision was subject to be reviewed, overruled and destroyed by Judge Guy L. Fake of the same Court?

M. Whether when Judge Thomas G. Walker denied the motion of the defendant Utah Fuel Company to dismiss complaint his decision was not the law of the case as established in District Court and should have been treated by any other judge sitting in same case?

1. Where the demurrer (motion) is to a pleading setting forth the distinctly specific facts touching the merits of the action or defense, and final judgment is rendered thereon, it would be difficult to find any reason in principle why the facts thus admitted should not be considered, for all purposes, as fully established as if found by a jury, or admitted in open court. If the party against whom a ruling is made on a demurrer wishes to avoid its effect as an admission of the facts in the pleading demurred to, he should seek to amend his pleading or answer, as the case may be. . . .

If he does not ask for such permission, the inference may justly be drawn that he is unable to produce the evidence, and that the fact is as alleged in the pleading. Courts are not established to determine what law might be upon possible facts, but to adjudge the rights of parties upon existing facts; and if their jurisdiction is invoked, parties will be presumed to represent in their pleadings the actual, and not supposeable, facts, touching the matters. The law on this subject is well settled in Could's Treaties on Plead-

ing, a work of recognized merit in this country, as follows: 'A judgment, rendered upon demurrer, is equally conclusive (by way of estoppel) of the facts confessed by the demurrer, as a verdict finding the same facts would have been; since they are established, as well in the former case as in the latter, by way of record. And facts thus established, can never afterwards be contested, between the same parties, or those in privity with them. Van Fleet's Former Adjudication. Demurrer Matters settled upon, are res judicata, pp. 672-674, at page 672.

Sec. 664 Van Fleet's above.

2. If a cause is reversed (affirmed) in a higher court the lower one is bound to proceed in accordance with the opinion sent down. . . . it would work injustice to overturn these rules on a second appeal, and these again on a third, and so on, ad infinitum. The suit might never end. Besides, it would be very undignified, and tend to bring the courts into merited disrespect, if the lower court should be compelled to retrace its steps on one appeal, and then to trace them back again on a second, and so on. Hence, with a few exceptions, it is a rule that a matter decided on appeal becomes, in effect, res judicata in that cause; (Price v. Price, 23 Ala. 60 and four prior cases); Chicago, M. & St. P. Ry. Co. v. Hoyt, 44 Ill. App. 48; Moshier v. Norton, 100 Ill. 63, 75; Wabash, St. Louis and Pac. Ry. Co. v. Peterson, 115 Ill. 597 (7 N.E.R. 485, and 6 N.E.R. 412); Drake v. Chicago, R. I. & P. Ry. Co., 70 Iowa 59 (29 N.W.R. 804); Paland v. Chicago, St. L. & N.O.R. Co., 44 La. Ann. 1003 (11 S. R. 707); Cumberland Coal and Iron Co. v. Sherman, 20 Md. 111, 131; Brown v. Somerville, 8 Md. 444, 454; Eyler v. Hoover, 8 Md. 1; Hamond v. Inleses, 4 Md. 138, 164; Emory v. Owings, 3 Md. 178; Young v. Frost, 1 Md. 377; McDonald v. Green, 9 Sm & M. (17 Miss.) 131, 141; O'Donohue v.

Hendrix, 17 Neb. 286 (22 N.W.R. 548;) Rogers v. Rochester, 21 Hun (28 N. Y. Supreme) 44; Thompson v. Howley, 16 Oregon 251 (19 Pac. R. 84); Warren v. Raymond, 17 S. Ct. 163, 189; Willis v. Smith, 72 Tex. 569 (10 S.W.R. 683); Truner v. Staples, 86 Va. 30 (9 S.E.R. 1123); Hall v. Lawther, 22 W. Va. 570, 574; Board of Education v. Parson, 24 W. Va. 551, 554; Roberts v. Cooper, How. (61 U. S. 467) or as it is frequently expressed, it becomes "the law of the case" in all its subsequent proceedings. Bryant v. Booth, 35 Ala. 269, and three prior cases; Perry v. Little Rock and Fort Smith Ry. Co., 44 Ark. 383, and six prior cases; People v. Hollady, 192 Cal. 661 (36 Pac. R. 927), and five prior cases; Lee v. Stahl, 13 Colo. 174 (22 Fla. 386); Crockett v. Crockett, 75 Ga. 202, 211, and twelve prior cases; Nickless v. Pearson, 126 Ind. 477, 488 (26 N.E.R. 478), and four prior cases; Adams County v. B. & M. R.R. Co., 55 Iowa, 94 (2 N.W.R. 1054); Norton v. Huntoon, 43 Kan. 275 (22 Pac. R. 565); Suns v. Reed, 12 B. Mon. (51 Ky.) 51; Stillwell v. Glascock, 47 Mo. App. 554; and three prior cases; Powell v. Dayton, S. & G.R.R. Co., 14 Oregon 22 (12 Pac. R. 665); St. Croix Lumber Co. v. Mitchell, S. Dakota (57 N.W.R. 236); Clay v. Clay, 2 Texas Unreported cases 257, 365.

Mem. The Decision of the Commercial Union of America, Inc. v. Anglo-South American Bank, Ltd., 10 F. 2d 937, which is printed in the Appendix here is pleaded here with like force and effect as if it was set forth here. To the same effect and with like force the cases quoted therein.

3. Judgments key 728. Irving Nat. Bank v. Law, 10 F. 2d 721, (6). Judgments key 726.—If a case is decided on one or more grounds, each ground is a good estoppel. Kessler v. Armstrong Cork Co., 158 F. 744, 85 C.C.A. 642 (C.C.A. 2). Similarly, if the decision of a court on a point

of law is based upon several grounds, each is equally authoritative on all, and no one is obiter. Railroad Co. v. Schutte, 103 U. S. 118, 26 L. Ed. 327; U. S. v. Chamberlin, 219 U. S. 250, 31 S. Ct. 155, 55 L. Ed. 204; U. S. v. Title Ins. Co., 265 U. S. 472, 44 S. Ct. 621, 68 L. Ed. 1110.

4. In the case of Railroad v. Schutte, supra, the Court proceeded: It cannot be said a case is not authority on one point because, although that point was properly presented and decided in the regular course of the consideration of the cause, something else found in the end which disposed of the whole matter. Here the precise question was properly presented, fully argued, and elaborately considered in the opinion. The decision on this question was as much a part of the judgment of the court as was that on any other of the several matters on which the case as a whole depended.

And in the case of United States v. Title Ins. Co., supra, the Court proceeded: Where there are two grounds, upon either of which an appellate court may rest its decision, and it adopts both, "the ruling on either is obiter, but each is the judgment of the court, and of equal validity with the other. Union Pacific R. Co. v. Mason City & Ft. D. R. Co., 199 U. S. 160, 166, 50 L. Ed.; 134, 26 Sup. Ct. Rep. 19; Florida Cent. R. Co. v. Schutte, 103 U. S. 118, 143, 26 L. Ed. 327, 336.

5. Ruberts, J. in Mayo v. Lakeland Highlands Canning Co., 309 U. S. 521, 60 S. C. 521. (3) . . . Such findings are obviously necessary to the intelligent and orderly presentation and proper disposition of an appeal.

(4) The record does not warrant a judgment of dismissal. The Complaint raises constitutional questions of due

process, equal protection, and violation of the obligation of contract; conclusiveness of the Findings of Fact and Conclusions of Law by the District Court. National Reserve Ins. Co. v. Scuder, 71 F. 2d. 884; Railroad Commission v. Maxey, 281 U. S. 82, 83, 74 L. Ed. 716; Cherry-Vurrele Co. v. Thatcher, 107 F. 2d. (8) on page 69; Storley v. Armour & Co., 107 F. 2d. 499, citing H. H. Cross Co. v. Simons, 8 Cir., 96 F. 2d. 482, 486; Crowell v. Baker Oil Tools, 9 Cri., 99 F. 2d. 574, 577; Healy C. J. in Occidental Life Ins. Co. v. Thomas, 107 F. 2d. 875; Green Valley Creamery v. U. S., 108 F. 2d. 342, (7) on p. 347; U. S. v. Borg-Waren Corporation, 108 F. 2d. 424, (4) on p. 427; C. C. A. 7th (1939); American Home Fire Assur. Co. v. Hargrove, 109 F. 2d. 86; Nicholas v. Minnesota Mining & Manufacturing Co. (C. C. A. 4th) 109 F. 2d. 162 (1) on p. 163; Gray McFawn & Co. v. Hegarty, Conroy & Co. Inc. et al. (C.C.A. 2d.* 109 F. 2d. 443 (3); Kurn et al. v. Beasley County Judge, C.C.A. 8th C.) 109 F. 2d. 687 (3), Gray v. United States, (C.C.A. 8th C.) 109 F. 2d. 728; Pullman Co. v. Chicago & N.W.R. Co., (C.C.A. 7th) 110 F. 2d. 425, (1) (2); Syracuse Engineering Co. v. Haight, 110 F. 2d. 468, (6); City of Sumter et al. v. Spur Distributing Co., C.C.A. 4th, Mar. 15, 1940, 110 F. 2d. 649 (1, 2); Goodacre v. Panagopoulos et als., C.C.A.D. of C., 110 F. 2d. 716, (1), (2); Creel v. Hudspeth, Warden, C.C.A. 10th C. Mar. 21, 1040, 110 F. 2d. 762, (4) on p. 763; Pers v. Hudspeth Warden C.C.A. 10th C. Mar. 21, 1040, 110 F. 2d. 812, (1), (5); Arenstien v. American Soc. of Composers, Authors and Publishers et al., D. C. S. D. of N. Y., 29 Fed. Supp. 388, (10), (11); Central R. Co. of New Jersey v. Central Hanover Bank & Trust Co. et al., 29 F. Supp. 826, (3). Under Civil Procedure Rule relating to findings by Court formal findings of fact and conclusions of law separately stated take place of opinion written by Court on the facts or law in an injury cause or proceeding; Clark Bros.

Co. v. Portex Oil Co., C.C.A. 9th, 113 F. 2d. 45 (4) on p. 47; Continental Oil Co. v. Jones, C.C.A. 10th C., 113 Fed. 2d. 557, (6); Atlas Beverage Co. et al. v. Minneapolis Brewing Co., C.C.A. 8th, 113 F. 2d. 672, (6); Bein Co. v. Landy, Collector of Internal Revenue, C.C.A. 8th, 113 F. 2d. 897, (1); Mississippi Valley Timber Co. v. Mengel Co. et al., C.C.A. 5th C., 112 F. 2d. 947; Hayes v. Kelly et ux., C.C.A. 9th C. 112 F. 2d. 897, (1); Sevens v. Edwards et al., C.C.A. 5th C. 112 F. 2d 534, (3); Edwards v. Lain, C.C.A. 7th C. 112 F. 2d. 343, (2); In re Mount Holly Paper Co. v. Davis et ux., C.C.A. 3rd C.; Automobile Ins. Co. of Hartford Conn. v. Springfield Dyeing Co. Inc., C.C.A. 3rd. C. Feb. 1940; Samuel White v. James A. Johnston, No. 697, 313 U. S. 538, 85 L. E. 1507, 61 S. Ct. 834; Ford Motor Co. v. Nat. Labor Relations Board, 205 U. S. 364; Oil Shares Incorporated v. Commercial Trust Co. et al., 304 U. S. 551; Federal Circuit Court of Appeals must follow decisions of other such federal courts. McConald v. U. S. (C.C.A. Minn. 1937) 89 F. 2d. 128, cer. denied. 1937, 57 S. Ct. 925, 301 U. S. 697, 81 L. Ed. 1352, rehearing denied 1937, 58 S. Ct. 4, 302 U. S. 773, 82 L. Ed. 599.

7. CH. N. O.

N. Whether on appeal to circuit court of appeals 3rd circuit No. 8027 the rulings of Judge Thomas G. Walker on motions numbered 1, 2, 3, and 4 did not become the matters and things adjudicated or res judicata or the law of the case? And

O. Whether the ruling of this Court on petition for writ of certiorari (63 S. Ct. 993, 318 U. S. 789, 87 L. Ed. 1156) in substance affirmed the judgment of the courts below? (Argument, page 1 et seq. of Appendix.)

8. CH. P., Q., R. & S.

P. Whether the defendant (Utah Fuel Company) in the district court have had complied with the requirements (F. R. 12 (a) (1). If the court denies the motion . . . the responsive pleading may be served within 10 days after notice of the courts action.)?

Q. Whether having failed to file any responsive pleading or answer, the said defendant have suffered itself to an application and entry of default against it? And

R. Whether under the state of facts, the status of the cause at that time, the application for the default of said defendant was justly and lawfully entered?

T. Whether the motion for Decree on Mandate and on the default of the defendant Utah Fuel Company was justly and legally made and presented by the plaintiff below and petitioner here?

1. The subject is now governed generally by rule 55 of the rules of civil procedure which covers entry of defaults, the judgment to be rendered, and authorities setting aside defaults upon "good cause" shown, all as more particularly hereinafter set forth.

(5a) Subdivision II. Existence and Entry of Default. Sec. 3255. What constitute default.

2. A default may occur by failure "to plead or otherwise defend" as provided by the Rules of Civil Procedure (Rule 55 (a). Default is usually taken either for failure to appear

(citations) or to plead (Hall v. Houghton & Upp. Mercantile Co., 60 Fed. 350; Seawell v. Crawford, 55 Fed. 729; Fowle v. Bowre, Fed. Cas. No. 4, 994, 3 Cranch C. C. 291) within the time allowed by the rules; but it may also be taken for willful failure of a party or of an officer or managing agent of a party to appear for taking of a deposition, or failure to serve answers to interrogatories (Rule 37 (d) of the Rules of Civil Procedure. Former Equity Rule 58 was of similar purport). A failure to answer within the time prescribed after overruling of a precedent motion undoubtedly presents an opportunity for default. Tallman v. Ladd, 5 F. 2d 582, (under prior equity practice); Southern Pacific R. Co. v. Temple, 59 Fed. 17; Ozark Land Co. v. Leonard, 24 Fed. 660, motion for modification of supersedeas denied 115 U. S. 465, 29 L. Ed. 445, 6 Sup. Ct. 127.

3. (Sec. 3255 Cont. on page 412 of Vol. 7, Cyc. of Fed. Proc.)

(56) Entry of Default. Rule 55 of the rules of civil procedure provides, by paragraph (a) for the entry of default by the clerk upon a failure to plead or otherwise defend, and then, by paragraph (b) for the entry of default judgment.

O'Hara v. McConnell, 93 U. S. 150, 23 L. Ed. 840; Scofield v. Horse Springs Cattle Co., 65 Fed. 433, citing Thomson v. Wooster, 114 U. S. 104, 29 L. Ed. 105, 5 Sup. Ct. 788; United States v. Whitmire, 188 Fed. 422.

These are obviously two distinct steps, although there is nothing in rule 55 to prevent them from being simultaneous except the requirement in sub paragraph (b) (2) of three-day notice if the party against whom judgment is to be taken appeared (Rule 55 (b) 2.)

Application under former equity rules, See W. & W. Fuse

Co. v. Trumbull Electric Mfg. Co., 183 Fed.; Austin v. Riley, 55 Fed. 833.

4. (6) Subdivision III. Opening, Vacating or Setting Aside Default.

Sec. 3270. Application and Showing.

A motion to open or set aside a default must be made within a "reasonable time," in no case exceeding six months after judgment taken, in accordance with the rule as to relief against judgments generally Rule 60 (b) of the Rules of Civil Procedure, referred to by Rule 55 (c).

5. Cyc. Fed. Proc. Sec. 1692. In interstate Commerce Commission v. Daley, 26 F. Supp. 427, defendant sent in, but did not file, his answer. Upon request of the clerk for the requisite fee defendant's counsel wrote the clerk that defendant did not desire to contest the petition. Judge McLellan denied a motion for judgment on the pleadings but said that a default might be entered under Rule 55 (b) (2) upon application therefore by plaintiff.

Orange Theatre Corporation v. Rayherstz Amusement Corporation et al. No. 7899 Circuit Court of Appeals Third Circuit. Argued February 20, 1942; Re-argued May 18, 1942. Decided Aug. 9, 1942.

BEFORE: BIGGS, MARRIS, JONES, and GOODRICH, CIRCUIT JUDGES.

GOODRICH, C. J.

(1) . . . (2d clause) The guiding mandate of the Federal Rules is that "they shall be construed to secure the just, speedy, and inexpensive determination of every action (citing Rule 1).

(2) We have then this situation: the stipulations extending the time were ineffective and the defendants are in the position of having failed to plead or otherwise to defend within twenty days allotted under rule 12 (a). They are therefore in default. There has been no entry of default in accordance with Rule 55 (a) (Citing note 14 (a). (The following part is set out underneath the Reported case.)

Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.") (Returning to the Decision.)

But that entry is a purely formal matter.

6. The Default of the defendant Utah Fuel Company.

Federal Rules of Civil Procedure for the District Courts of the United States. Rule 60. After expiration of six months, court was without authority to relieve defendant from an order (Application and Order thereon) of default. Cassell v. Barness, 1 F.R.D. 15; quoted in H. Fed. Pr. Pocket Part p. 144 Proctor, Justice. In view of the six months time limitation, stated in Rule 60 (b) Rules of Civil Procedure for District Courts, 28 U.S.C.A. following section 723c, the court is without authority at this time to relieve defendant of the order of default. Accordingly, the motion to vacate default is denied. See Moran v. Moran, 31 F. Supp. 227; And this period may not be enlarged: Nachod & United States Signal Corp. v. Automatic Signal Corp., 32 F. Supp. 588; Reed v. Southern Atlantic Steamship Co., 6 Fed. Rules Serv. 601-31, case No. 1; Cavallo v. Agwillines, Inc., S. D. N. Y. 1942, 6 Fed. Rul. Serv. 60b.31, case No. 2, 2 F.R.D. 526.

FEDERAL RULE 12. (a) (1).

Paragraph 1.
Kohloff v. Ford Motor Co., D.C.N.Y., 27 F. Supp. 803.

9. CH. S.

S. Whether under the state of facts set forth in the record, an injunction restraining the conspirators involved in the conspiracy of and from carrying on the conspiracy set forth in the two complaints is not an absolute necessity and therefore justifiable; or the petitioner herein is to cross his hands or arms, remain inactive, and permit the conspirators to carry on?

REASON (T).

1. The petitioner herein is living in his sixtieth year. He was born in the year 1883 in Leukas, Greece. A farmer and lived there up to the spring of the year 1907, except few months when he lived in Piraieus, Greece. He was a modest farmer on the line of two counties. He enjoyed the love of the people of both counties and of strangers. He was never inside of a jail except as a visitor two-three times. He was never made a defendant in any case civil or criminal and on his last day there he planted potatoes. He emigrated in the State of Utah in the winter of the year 1907. Though in a foreign land, he gained the reputation he had in his own home land. There he lived a loving life in the best of friendship with all. He was advanced by the respondent-company to be the head of all other Greeks it employed there. But his clean life and upright forward

did not permit him to keep on going along with the officers and agents of said respondent. It would mean shooting to death for him for his part of the operations of said respondent. The said respondent was greatly benefited by his services and considered him as too dangerous to its operations after he gave up his connections as interpreter. To remedy this it established the conspiracy which is now before the court.

2. The influence of said respondent are such as to move to its aid the authorities of the State of Utah and they unjustly join in the conspiracy and they unjustly remain to its side aiding it in every way. See pages , Record; their brief on appeal No. 8027; and in this Court on proceedings for certiorari. They have no cause of action and never had one. There is no one in the State of Utah who has been molested or injured by this petitioner. Nevertheless, they carry on with the respondent company against right and justice and the Constitution and laws of the State of Utah, and the Constitution and laws of the United States.

3. The grounds for the injunction are set forth in 104-17-2 (pages , Record). R. S. of Ut. It follows that the injunction is a matter of right, because the acts of the respondent and those of the authorities of the State of Utah are continuing, ruinous, and the damages irreparable, and the remedy at law is inadequate. Strawberry Valley C. Co. v. Chipman, 13 U. 454, 45 P. 348. May we ask them to produce their records?

4. (21 C.J.S. Sec. 195, at page 340.)

DECISION IN COMPANION CASE.

A decision in one case is controlling as the law of the case, or at least as authority, in a companion case involving the same subject matter, and in which the points of decision and facts are the same, 81.

81 Miller v. Travelers Ins. Co. of Hartford, Conn., 80 F. 2d 502, certiorari denied 56 S. Ct. 682, 298 U. S. 660, 80 L. Ed. 1385; Williams v. State, 171 So. 390, 27 Ala. App. 292; American Equitable Assur. Co. of New York v. Bailey, 147 So. 446, 25 Ala. App. 303, certiorari denied 147 So. 448, 226 Ala. 393; Schwalb v. Riel, 282 P. 876, 86 Colo. 492; State ex rel Chalmers v. Sholtz, 163 So. 926, 121 Fla. 514; Sheffield v. Tabb., 173 S. E. 124, 178 Ga. 255; Prudential Ins. Co. of America v. Richman, 11 N. E. 2d 132, 292 Ill. App. 637, transferred 4 N. E. 2d 76, 264 Ill. 234; Marks Adm'r v. Commonwealth, 124 S. W. 2d 762, 276 Ky. 514; City of St. Louis v. Pope, 126 S. W. ed. 1215; Secerholm v. City of Port Arthur, Civ. App., 3 S. W. 2d 925, affirmed Lyner v. La Coste, Com. App. 13 S. W. 2d 685 and Lyner v. Keith, Com. App. 12 S. W. 2d 687; Conner v. State, 111 S. W. 2d 266, 133 Tex. Cr. 390; Brown v. State, 91 S. W. 2d 139, 129 (Tex. Cr. 625). Including a subsequent suit on the same cause of action, for the same relief whether it is independent of or ancillary to the original action. 82.

82 Becker Steel Co. of America v. Cummings, C. C. A. N. Y. 95 F. 2d 319, certiorari denied 59 S. Ct. 64, 305 U. S. 604, 83 L. Ed. 384. Where two cases are jointly tried (heard) as companion cases, and are appealed on separate records but involving the same questions on appeal the decision in one case is conclusively as to the other case, 83. Fidelity & Casualty Co. of New York v. Raborn, 172 So.

896, 27 Ala. App. 455; Krauenbahl v. House, 107 S. W. 2d 328, 269 Ky. 511; Dossett v. Missouri State Life Ins. Co. Com. App., 277 S. W. 620, reversing Missouri State Life Ins. Co. v. Dossett, Civ. App., 265 S. W. 254, and rehearing denied Dossett v. Missouri State Life Ins. Co., 284 S. W. 949.

10. CH. U., Ua.

U. Whether the facts set forth in the assignment of errors to the District Court and in the Proceedings under Judicial Code Sec. 21, as amended by the Act of August 24, 1937, Chapter 754, 50 Stat. 751, Section 13, are sufficient in law disqualifying Judge Guy L. Fake from proceeding any further in the matter or cause? And

Ua. Whether Judge Fake assumed unwarranted and exclusive jurisdiction of the plaintiff's cause to destroy it while plaintiff and defendant reside in the Division of Trenton five and seven city blocks from the Federal Court House at Trenton, N. J.?

Ch. (U.-Ua.). The argument and authorities under Ch. (D) above pages is repeated here with like force as if it had been set out again hereunder.

Petitioner herein says that the statements made by Judge Guy L. Fake in open court as they are confirmed by the wording and phraseology of his Opinion in the two causes are malicious per se as well as criminal per se under the laws of the United States (see hereafter) and need no further comment. For the very idea that one man may be compelled to hold his life or the means of living, or any material rights essential to the enjoyment of life, at the

mere will of another seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself. Supreme Court of the United States in Yick Wo. v. Hopkins, 118 U. S. on p. 369, parts of case hereunder, (paragraph 6).

REASON U and Ua.

WHITAKER v. McLEAN, 118 F. 2d 996. No. 7573.

1. UNITED STATES CIRCUIT COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA. DECIDED FEB. 24, 1941.

1. Judges Key 49 (2).

Where during the trial but in the absence of jury trial judge made remarks which few, if any, judges would make, in the course of trial, unless they had developed definite and positive hostility to plaintiff and his case, and judge directed verdict for defendant, judgment was required to be reversed since hostility is a form of bias.

See Words and Phrases, permanent Edition, for all other definitions of "bias".

2. Judges Key 49 (1).

The policy underlying the statute providing for the disqualification of a judge for bias is that the Courts of the United States shall not only be impartial in controversies submitted to them, but shall give assurance that they are impartial. Jud. Code Sec. 21, 28 U.S.C.A. Sec. 25.

3. Judges Key 49 (1).

A right to be tried by a judge who is reasonably free from bias is a part of the fundamental right to a "fair trial,"

and if before a case is over a judge's bias appears to have become overpowering, it disqualifies him. Jud. Code Sec. 21, 28 U.S.C.A. Sec. 25.

See words and Phrases, permanent Edition, for all other definitions of "Fair Trial".

Appeal from the District Court of the United States for the District of Columbia.

Action by Norman T. Whitaker against Evalyn Walsh McLean.

From an adverse judgment, plaintiff appeals.

Reversed and remanded.

Norman T. Whitaker; pro se. Nelson T. Hartson, Edmund L. Jones, and Howard Boyd, all of Washington, D. C., for Appellee.

Before GRONER, CHIEF JUSTICE, and Miller and Edgerton, Justices.

PER CURIAM.

In a colloquy with counsel, during the trial though in the absence of the jury, the judge who tried this case made remarks which caused the plaintiff's attorney to express the opinion that he could not very well go on because the judge's remarks evidenced bias and prejudice. At the conclusion of the colloquy, the trial proceeded, and at the close of the testimony, the judge directed a verdict for the defendant.

The plaintiff appeals.

(1-3) The judge may, as indeed he insisted, have felt no hostility to the plaintiff, and in that view he was subjectively free from bias. But bias must be considered objectively. Few, if any, judges would make the reported remarks, in the course of a trial, unless they had developed definite and positive hostility to plaintiff and his case.

Hostility is a form of bias. When a judge has shown bias before trial, section 21 of the Judicial Code, 28 U.S.C.A. Sec. 25, provides means of disqualifying him. The policy underlying section 21 is that the courts of the United States "Shall not only be impartial in the controversies submitted to them but shall give assurance that they are impartial." Berger v. United States, 255 U. S. 22, 36, 41 Sup. Ct. 230, 234, 65 L. Ed. 481. A bias which develops during the trial and is "grounded on the evidence" has been held not to be within the terms of section 21. Craven v. United States, 1 Cir. 22 F. 2d 605; certiorari denied 276 U. S. 627, 48 S. Ct. 321, 72 L. Ed. 73. Often some degree of bias develops inevitably during the trial. Judges cannot be forbidden to feel sympathy or aversion for one party or the other. Mild expressions of feelings are as hard to avoid as the feelings itself. But a right to be tried by a judge who is reasonably free from bias is a part of the fundamental right to a fair trial. If, before a case is over, a judge's bias appears to have become overpowering, we think it disqualifies him. It follows that the judgment must be reversed. This is the more regrettable because it is our impression, based on an examination of the record, that the claim on which the plaintiff sued was probably without merit.

Reversed and remanded.

2. VICTOR L. BERGER ET AL. v. UNITED STATES, 255 U. S. 22, 41 S. Ct. 230, 65 L. Ed. 481 on p. 233 of 41 S. Ct.:

Mr. Justice McKenna delivered the Opinion of the Court.

(5) Our interpretation of section 21 has therefore no deterring consequences, and we cannot relieve from its

imperative conditions upon a dread or prophecy that they may be abusively used. They can only be so used by making a false affidavit, and a charge of and the penalties of perjury restrain from that—perjury in him who makes the affidavit; connivance therein of counsel, thereby subjecting him to disbarment. And upon what inducement and for what achievement—no other than trying the case by one judge rather than another, neither party or counsel having voice or influence in the designation of that other; and the section in its care permits but "one such affidavit."

But if we concede, out of deference to judgment, that we respect a foundation for the dread, a possibility to the prophecy, we must conclude Congress was aware of them and considered that there were countervailing benefits. At any rate we can only deal with it as it is expressed and enforce it according to its expression. Nor is it our junction to approve or disapprove it, but, we may say, that its solicitude is that the tribunals of the county shall not only be impartial in the controversies submitted to them but shall give assurance that they are impartial, free, to use the words of the section, from any "bias or prejudice" that might disturb the normal course of impartial judgment. And to accomplish this end the section withdraws from the presiding judge a decision upon the truth of the matters alleged. Its explicit declaration is that upon the making and filing of the affidavit, the judge against whom it is directed "shall proceed no further therein, but another judge shall be designated in the manner prescribed in * * * section twenty-three to hear such matter." And the reason is easy to divine. To commit to the judge a decision upon the truth of the facts gives chance for the evil against which the section is directed. The remedy by appeal is inadequate. It comes after the trial and if prejudice exist it has worked its evil and a judgment of

it in a reviewing tribunal is precarious. It goes there fortified by presumptions, and nothing can be more elusive of estimate or decision than a disposition of a mind in which there is a personal ingredient. 1

3. MITCHELL v. UNITED STATES, C.C.A. 10th C. March 6, 1942. 126 F. 2d 550.

1. Judges Key 51 (4).

When party files affidavit of trial judge's disqualification because of personal bias against affiant or in favor of opposite party, the truth of all of allegations of fact contained therein is admitted and it becomes duty of court to determine only its legal sufficiency, and if affidavit meets requirements of statutes and is accompanied by certificate of counsel of record, presiding judge can proceed no further but is disqualified. Jud. Code Sec. 21, 28 U.S.C.A. Sec. 25.

2. Judges Key 49 (1).

The purpose of statute relating to trial judge's disqualification because of personal bias or prejudice is to secure for all litigants a fair and impartial trial before a tribunal completely divested of any personal bias and it is duty of all courts to scrupulously adhere to such admonition and to guard against any appearance of personal bias. Jud. Code Sec. 21, 28 U.S.C.A. S2c. 25.

3. Judges Key 51 (3).

Before BRATTON, HUXMAN, and MURRAH, Circuit Judges.

MURRAH, Circuit Judge.

(1) Section 21 of the Judicial Code, 28 U.S.C.A. Sec. 25, provides that when a party to a civil or criminal pro-

ceedings shall make and file an affidavit that the judge before whom the proceedings is to be tried or heard has a personal bias or prejudice either against him or in favor of an opposing party, such judge shall proceed no further but instead another judge shall be designated to act; that the affidavit shall state the facts and the reasons for the belief that such bias and prejudice exists, and shall be filed not less than ten days before the beginning of the term of court or good cause shall be shown for failure to do so, and that no such affidavit shall be filed unless accompanied by a certificate of counsel of record and that such affidavit and application are made in good faith. When such an affidavit is filed, the truth of all of the allegations of fact contained therein is admitted, and it becomes the duty of the court to determine only its legal sufficiency, and if the affidavit meets the requirements of the statutes and is accompanied by a certificate of the counsel of record, the presiding judge can proceed no further but is disqualified. Scott v. Beams, 10 Cir., 122 F. 2d 777; Berger v. United States, 255 U. S. 22, 41 S. Ct. 230, 65 L. Ed. 481; Henry v. Speer, 5 Cir., 201 F. 869; Lewis v. United States, 10 Cir., 14 F. 2d 369; Nations v. United States, 8 Cir., 14 F. 2d 507, certiorari denied 273 U. S. 735, 47 S. Ct. 243, 71 L. Ed. 866; Craven v. United States, 1 Cir., 22 F. 2d 605; certiorari denied 276 U. S. 627, 48 S. Ct. 321, 72 L. Ed. 738; Morris v. United States, 10 Cir., 26 F. 2d 444.

(2, 3) The purpose of this section is to secure for all litigants a fair and impartial trial before a tribunal completely divested of any personal bias or prejudice, either for or against any party to the proceedings, and it is the duty of all courts to scrupulously adhere to this admonition and to guard against any appearance of personal bias or prejudice which might generate in the minds of litigants

a well-grounded belief that the presiding judge is for any reason personally biased or prejudiced against their cause. But the statute, by its own terms, provides a safeguard against the abuse of the privilege granted by the statute, and that well-founded safeguard is the requirement that the affidavit must be accompanied by a certificate of counsel of record, and without which the affidavit is ineffectual to disqualify the judge. This requirement is founded on the assumption that a member of the bar or counsel of record will not indulge in reckless disregard of the truth, and further attest to the good faith and belief of the affiant. Beland v. United States, 5 Cir., 117 F. 2d 958, certiorari denied 313 U. S. 585, 61 S. Ct. 1110, 85 L. Ed. 1541; Cuddy v. Otis, 8 Cir., 33 F. 2d 577; Morse v. Lewis, 4 Cir., 54 F. 2d 1027; Currin v. Nourse, 8 Cir., 74 F. 2d 273; Newman v. Zerbst, 10 Cir., 83 F. 2d 973.

4. This Petitioner may not be compelled to hold his life, Liberty and Property or the means of living at the mere will of Judge Fake of the Court Below.

AMERICAN JURISPRUDENCE, VOL. 12. CONSTITUTIONAL LAW, p. 257. G. DISCRIMINATORY ADMINISTRATION OF LAWS.

Sec. 566. Generally.—The purpose of the equal protection clause of the Fourteenth Amendment to the Federal Constitution is to secure every person within the state's (United State's) jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through duly constituted agents (Sunday Lake Iron Co. v. Wakefield Twp., 247 U. S. 350, 62 L. Ed. 1154.

An actual discrimination arising from the method of administering a law is as potential in creating a denial of equality of rights as a discrimination made by law. Rogers v. Alabama, 192 U. S. 226, 48 L. Ed. 417, 24 S. Ct. 257; Tarrance v. Florida, 188 U. S. 519, 47 L. Ed. 1411.

ENCYCLOPEDIA OF UNITED STATES SUPREME COURT REPORTS. VOL. 4. CONSTITUTIONAL LAW. P. 402.

5. HOSTILE DISCRIMINATIONS FORBIDDEN.

6. Yick Wo v. Hopkins, 118 U. S. on p. 369, last paragraph.

When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is, indeed, quite true, that there must always be lodged somewhere, and in some person or body, the authority of final decision; and in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the presence of opinion or by means of the suffrage. But the fundamental rights to life, liberty, and the pursuit of happiness, considered as undivided posses-

sions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth "may be a government of laws and of men." For the very idea that one man may be compelled to hold his life or the means of living, or any material rights essential to the enjoyment of life, at the mere will of another seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself.

There are many illustrations that might be given of the truth, which would make manifest that it was self evident in the light of our system of jurisprudence.

11. CH. V. W.

V. Whether the defendants in civil No. 2800 were accorded their statutory rights to appear and answer and elected to try the suit for injunction on their motions to dismiss it.

W. Whether motion numbered 1 as filed by counsel for Utah Fuel Company is the only motion permitted by Federal Rule 12 of the Federal Rules of Civil Procedure for the District Court of the United States.

REASON V.

1. The parties in the suit were accorded their statutory rights and the Docket Entries sustain this Statement.

REASON W.

2. Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used. Federal Rule 7 (c).

Weaver v. Mark, 112 F. 2d 917; Shell Petroleum Corp. v. Stueve, 25 F. Supp. 879; Gay v. E. H. Moore, Inc., 26 F. Supp. 749; Howard v. Puget Sound Mortgage Co., 31 F. Supp. 318; Rudco Oil & Gas Co. v. Traders & Ins. Co., 37 F. Supp. 119.

2a. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, . . . to be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (lack of jurisdiction over the subject matter), (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted. Federal Rule 12 (b). The first five defenses are not available to the defendants in the present suit. Let us presume that the (6th) is. They have pleaded it in their first three motions filed (pages 112-113; 155-157; 195-197 Record). See citations hereunder.

3. Fed. R. 12 (f). Motion to Strike . . . the court may order any redundant, immaterial, impertinent, or scandalous matter stricken from any pleading. The rule does not say: On a motion to strike the court may strike the cause at a glance on the motion. This would be the old demurrer and it is abolished by Fed. R. 7 (c). Kohloff, et al. v. Ford Motor Co., 27 F. Supp. 803.

4. Fed. R. 12 (g). If a party makes a motion under this rule and does not include therein all defenses and objec-

tions then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on any of the defenses or objections so omitted, . . . It follows that the Second Motion filed to the cases Nos. 728 and 2800 by counsel for the respondent Utah Fuel Company has been filed in violation of the provisions of the said federal rules.

5. Fed. Rule 12 (h). WAIVER OF DEFENSES. A party waives all defenses and objections which he does not present either by motion as hereinbefore provided . . . . and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. It follows that under the Rules of Civil Procedure the Court has power to dismiss a case only if it lacks jurisdiction over the subject matter and over the parties. Neither one of these grounds are present in the said two cases. For further argument on the subject see pages , Record, in which petitioner's Opposing Affidavits are set out.

6. The Bill on the equity side of the Court as filed is open to amendment if thought necessary. Monarch Anthracite Mining Co. v. Coffin (C.C.A. 3d C. 103 F. 2d 337, at page 339).

Defects of form; amendments. 28 U.S.C.A. Sec. 777.

6a. No summons, writ, declaration, process, judgment, or other proceedings in civil causes, in any court of the United States, shall be abated, arrested, quashed, or reversed for any defect or want of form; but such court shall proceed and give judgment according as the right of the cause and matter in law shall appear to it, without regarding any such defect or want of form, . . . (R. S. Sec. 954).

7. Suits in equity cannot be sustained in the Courts of the United States in any case where a plain, adequate and complete remedy may be had at law. (28 U.S.C.A. 384.) (Judicial Code, Sec. 267.) (Mar. 3, 1911, ch. 231, Sec. 267, 36 Stat. 1163.)

8. Where a plain, adequate and complete remedy may be had at law. The Record of the cause and the cases cited at the caption present the answer. So long as the respondent Utah Fuel Company and its partners in conspiracy are free to buy dishonest lawyers as they have done so in the past and do continuously there can be no remedy at law at all. The Record presents a martyric cause in force and operation for the last twenty-seven years or more and now on Monday, November 1st, 1943, H. Collin Minton, Jr., as counsel for the respondent Utah Fuel Company, upon photostating and rephotostating their overt acts throughout the several States and the District of Columbia where they operated their conspiracy, and notwithstanding the Memorandum decision of Judge Thomas Glynn Walker (pages 17-22 of Bill, and pages , Record), entered against his first demurrer to the declaration in civil No. 728; the Decree of the Circuit Court of Appeals Third Circuit on Appeal No. 8027 (page , Record), and the proceedings had in ; and upon the offers he made in open Court to Judge Guy L. Fake (pages , Record), moved the Federal District Court for the district of New Jersey, the division at Newark, N. J., or Judge Guy L. Fake to whom he offered to pay the full amount involved if he would destroy the petitioner herein, for two Orders:

9. One Order dismissing the Complaints in the above entitled causes; and one Order directing the Clerk of the

United States District Court for the district of New Jersey to refuse to receive for filing any pleadings, documents or exhibits in causes now pending, or any future causes attempted to be instituted by Nicholas J. Curtis pro se (the petitioner herein); and on April 24, 1944, upon the directions of Judge Fake made in his Opinion (page , Record), filed an answer pleading the statute of limitations. For like reasons, it follows that there is no plain, adequate and complete remedy to be had at law. It further follows that, according to the practice of Judge Guy L. Fake, there is no remedy to be had at all. Will it be unreasonable to ask them to produce their Official Record and examine eye witnesses in order to establish the truth of the two Complaints? The Constitutional requirement of due process is not satisfied where a conviction is obtained by the presentation of testimony known to the prosecuting authorities of the state of Utah to be perjured (Amdt. 14.—Rights of Citizens, page 928, citing Mooney v. Holohan, 294 U. S. 103, 112.)

10. A State, through the action of its officers, may not contrive a conviction through the pretense of a trial which in truth is "but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured" (Brown v. Mississippi, 297 U. S. 278, 286); and this is what is going on now at Newark, N. J.

11. "The right of confrontation did not originate with the provision in the Sixth Amendment, but was a common-law right having recognized exceptions. The purpose of that provision, this Court often has said, is to continue and preserve that right, and not to broaden it or disturb the exceptions." Salinger v. United States, 272 U. S. 542, 548.

This right is also conferred by a statute of the United States (28 U.S.C.A. Sec. 636. Production of books and writings). In the trial of actions at law, the courts of the United States may, on motion and due notice thereof, require the parties to produce books or writings in their possession or power, which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery..... (R. S. Sec. 724.) In this case now before the Court the Motion Papers and Written Interrogatories are now pending for the last four years and the administration of justice is held by the throat.

Federal Rule 12 (b), Paragraph (6). Citations thereunder:

Leimer v. State Mut. Life Assur. Co. of Worcester, Mass., C.C.A. 8, 108 F. 2d 302;

L. Singer & Sons v. Union Pac. R. Co., C.C.A. 8, 109 F. 2d. 493;

Tahir Erk v. Glenn L. Martin Co., App. D. C., 116 F. 2d 865;

Asham v. Coleman, D. C. Pa., 25 F. Supp. 388;

Gay v. E. H. Moore, Inc., D. C. Okl., 26 F. Supp. 749;

Mahoney v. Bethlehem Engineering Corporation, D. C. N. Y., 27 F. Supp. 865;

Duarte v. Christie Scow Corporation, D. C. N. Y., 27 F. Supp. 894;

Shelaeff v. Groves, D. C. Cal., 27 F. Supp. 1018;

Sherover v. John Wanamaker, N. Y. D. C. N. Y., 29 F. Supp. 650;

Loughman v. Pitz, D. C. N. Y., 29 F. Supp. 882;

Banks v. King Features Syndicate, D. C. N. Y., 30 F. Supp. 352;

Westmoreland Asbestos Co. v. Johns-Manville Corporation, D. C. N. Y., 30 F. Supp. 389;
Duart Mfg. Co. v. Philad Co., D. C. Del., 30 F. Supp. 777;
C. F. Simonin's Sons v. American Can Co., D. C. Pa., 30 F. Supp. 901;
Dysart v. Remington Rand, Inc., D. C. Conn., 31 F. Supp. 293;
U. S. v. Edward Fay & Son, D. C. Pa., 31 F. Supp. 413;
Kadylak v. O'Brien, D. C. Pa., 32 F. Supp. 281;
Winkler v. New York Evening Journal, D. C. N. Y., 32 F. Supp. 810;
Smith v. Blackwell, D. C. S. C., 34 F. Supp. 989;
Eberle v. Sinclair Prairie Oil Co., D. C. Okl., 35 F. Supp. 296;
Vassardakis v. Parish, D. C. N. Y., 36 F. Supp. 1002;
Continental American Life Ins. Co. of Wilmington, Del. v. Fritsche, D. C. Pa., 37 F. Supp. 1;
Ripperger v. Schroder-Rockefeller & Co., D. C. N. Y., 37 F. Supp. 375;
Ellis v. Stevens, D. C. Mass., 37 F. Supp. 488;
Bramvir v. Cunard White Star Limited, D. C. N. Y., 37 F. Supp. 906;
Kellogg Co. v. National Biscuit Co., D. C. N. J., 38 F. Supp. 643;
Hadley v. Rinke, D. C. N. Y., 39 F. Supp. 207;
Baker v. Sisk, D. C. Okla., 1 F. R. D. 232;
Sheehan v. Municipal Light & Power Co., D. C. N. Y., 1 F. R. D. 363;
Southeastern Compress & Warehouse Co. v. Page, D. C. Ga., 1 F. R. D. 363.

Federal Rule 12 (f). MOTION TO STRIKE. • • • •

U. S. v. McCulloch, D. C. N. Y., 26 F. Supp.
Mendola v. Carborundum Co., D. C. N. Y., 26 F. Supp. 359;
Watts Electric & Manufacturing Co. v. United-Carr Fastener Corp., D. C. Mass., 27 F. Supp. 277;
Brinley v. Lewis, D. C. Pa., 27 F. Supp. 313;
Mahoney v. Bethlehem Engineering Corporation, D. C. N. Y., 27 F. Supp. 865;
National Millwork Corporation v. Preferred Mut. Fire Ins. Co. of Chenango County, D. C. N. Y., 28 F. Supp. 952;
Chambers v. Cameron, D. C. Ill., 29 F. Supp. 742;
Westmoreland Asbestos Co. v. Johns-Manville Corp., D. C. N. Y., 30 F. Supp. 389;
Alropa Corporation v. Heyn, D. C. Pa., 30 F. Supp. 668;
Radtke Patents Corporation v. C. J. Tagliabue Mfg. Co., D. C. N. Y., 31 F. Supp. 226;
U. S. v. Tedesco, D. C. N. Y., 31 F. Supp. 322;
U. S. v. Edward Fay & Son, D. C. Pa., 31 F. Supp. 413;
Teiger v. Stephan Oderwald, Inc., D. C. N. Y., 31 F. Supp. 626;
Schenley Distillers Corp. v. Renken, D. C. S. C., 34 F. Supp. 678;
Tatum v. Acadian Production Corp. of Louisiana, D. C. La., 35 F. Supp. 40;
Samuel Goldwyn v. United Artists Corp., D. C. N. Y., 35 F. Supp. 236;
Parks-Cramer Co. v. Mathews Cotton Mills, D. C. S. C., 36 F. Supp. 236;

Brockway Glass Co. v. Hartford-Empire Co., D. C. N. Y., 36 F. Supp. 470;
Sbicca-Del Mac, Inc. v. Milius Shoe Co., D. C. Mass., 36 F. Supp. 623;
Therfeld v. Postman's Fifth Ave. Corp., D. C. N. Y., 37 F. Supp. 958;
Kellogg Co. v. National Biscuit Co., D. C. N. J., 38 F. Supp. 643;
Shultz v. Manufacturers & Trades Trust Co., D. C. N. Y., 17 F. R. D. 53;
Myers v. Beckman, D. C. Okla., 1 F. R. D. 99;
Gilbert v. General Motors Corp., D. C. N. Y., 1 F. R. D. 101;
Reilly v. Wolcott, D. C. N. Y., 1 F. R. D. 103;
Mulloney v. Federal Reserve Bank of Boston, D. C. Mass., 1 F. R. D. 153;
Meek v. Miller, D. C. Pa., 1 F. R. D. 162;
Michelson v. Shell Union Oil Corp., D. C. Mass., 1 F. R. D. 183;
O'Leary v. Liggett Drug Co., D. C. Ohio, 1 F. R. D. 272;
Courteau v. Interlake S. S. Col., D. C. Mich., 1 F. R. D. 429;
Haddock v. Springfield Yellow Cab Co., D. C. Ohio, 1 F. R. D. 504;
French v. French Paper Co., D. C. Mich., 1 F. R. D. 531;

Numerous other cases hereunder. See p. 721, Vol. 72, F. D.

FEDERAL RULE 12 (h). WAIVER OF DEFENSES.

Doyle v. Loring, C.C.A. 6, 107 F. 2d 337;
State of Missouri, ex rel. and to Use of De Vault v. Fidelity Casualty Co. of New York, C.C.A. 8, 107 F. 2d 343;
Nakdimen v. Baker, C.C.A. 8, 111 F. 2d 778;
Vilter Mfg. Co. v. Rolaff, C.C.A. 8, 110 F. 2d 491;
Person v. U. S., C.C.A. 8, 112 F. 2d 1;
Puente v. Spanish Nat. State, C.C.A. 2, 116 F. 2d 43;
Central Mexico Light & Power Co. v. Munch, C. C.A. 2, 116 F. 2d 85;
Hackner v. Guaranty Trust Co. of New York, C. C.A. 2, 117 F. 2d 95;
Wheeler v. Lientz, D. C. Mo., 25 F. Supp. 939;
Mills v. Lowndes, D. C. Md., 26 F. Supp. 792;
Duarte v. Christie Scow Corp., D. C. N. Y., 27 F. Supp. 318;
Devine v. Griffenhagen, D. C. Conn., 31 F. Supp. 624;
Piest v. Tide Water Oil Co., D. C. N. Y., 27 F. Supp. 1921;
Dysart v. Remington Rand, D. C. Conn., 31 F. Supp. 296;
Murphy v. Puget Sound Mortgage Co., D. C., Wash., 31 F. Supp. 318;
Devine v. Griffenhagen, D. C. Conn., 31 F. Supp. 624;
Zwerling v. New York & Cuba Mail S. S. Co., D. C. N. Y., 33 F. Supp. 721;
Equitable Life Assur. Soc. of U. S. v. Saftlas, D. C. Pa., 35 F. Supp. 62.

12. CH. X.

X. Whether Judge Guy L. Fake did not deprive the district court of its jurisdiction when he called before him H. Collin Minton, Jr., Counsel pro se, Utah Fuel Company, et als., and in open Court conspired with him and ordered and directed him to proceed and file his second motion to dismiss and for injunction and to destroy the plaintiff and his cause notwithstanding the previous decisions of that 1. District Court; 2. Circuit Court of Appeals; and 3. This Court.

REASON X.

The plain purpose of the statute (Judicial Code, Section 21) was to afford a method of relief through which a party to a suit may avoid trial before a judge having a personal bias or prejudice against him or in favor of the opposite party. Price v. Johnson, 125 F. ed. 806. There can be no stronger statements made by a judge to a party in a civil action before him than those which Judge Guy L. Fake and counsel for the respondent made. The judge to declare: He must die here in poverty a martyric death! Make the Motion and watch it to come up before me; and counsel for the defendants to make offers. We will pay to your honor the full amount involved if you destroy him (Pages 267-270, Record; and pages 2a-11a of Brief, to C.C.A. 3d C.; and again on pages 9-10 of same Brief.)

2. There is no judge on the face of the earth to sit down and write an Opinion the first three paragraphs to be based upon his own ill will or malice and to dismiss the affidavit

setting forth the conspiracy between himself and counsel for the defendants.

3. The bodies of motions or the copies thereof served upon your petitioner herein are set out correctly under Ch. Ea. See also the Record, pages 5, 6, 7, is the motion by H. Collin Minton, Jr., Utah Fuel Co., et als.; 45, 46, ½ of 47 is the motion of Rosenkrans, et als.; 83, 84, 85, ½ of 86 is the motion of Carol C. Johnson. As to Motions addressed to Civil No. 2800, see pages , Record.

4. Falsify (Title 18, U.S.C.A., Sec. 235). To disprove; to prove to be false or erroneous; to avoid or defeat; spoken of verdicts, appeals, etc., Co. Litt. 1040.

5. To counterfeit or forge; to make something false; to give a false appearance to any thing; as to falsify a record or document. Black's L. Dictionary, 3rd Ed.; Citing: Pou v. Ellis, 66 Fla. 358, 63 So. 721, 722, and, Pull. Acts., 162; 1 Story, Eq. Jur., Sec. 525. See Shores-Mueller Co. v. Bell, 21 Ga. App. 194, 94 S. E. 83, 84; Falsification.

6. The alteration or making false of a record is punishable at common law or by statute in the states, and, if of records of the United States courts, by Act of Congress of the United States of April 30, 1870; U. S. R. S., Sec. 5394. Bouvier L. D.

Whoever, having the custody of any record, proceeding, map, book, document, paper, or other thing specified in Section 234 of this title, shall willfully and unlawfully conceal, remove, mutilate, obliterate, falsify, or destroy any such record, proceeding, map, book, document, paper, or thing, shall be fined not more than $2,000, or imprisoned not more than three years or both; and shall moreover for-

feit his office and be forever afterward disqualified from holding any office under the Government of the United States. Title 18, U.S.C.A., Sec. 235 (Mar. 4, 1909, Ch. 321, Sec. 129, 35 Stat. 1112).

7. It would seem that the provisions of the statute quoted above is sufficient to disqualify Judge Guy L. Fake from proceeding any further with the cause of the petitioner herein and pretenses to the contrary notwithstanding. See Ch. (Y. Z.) hereunder.

13. CH. Y. Z.

Y. Whether paragraphs 1, 2, and 3 of the Opinion of Judge Guy L. Fake are supported by the basic grounds set forth in the first three motions filed in Civil No. 2800. Or

Z. Whether these said paragraphs are the judge's malicious imaginations based upon the fourth and only motion which he directed to be made and presented to him and to be watched to come up before him "because no other judge will hear you" for and in consideration of the sums offered to him by said counsel in open court (the amount involved).

REASONS (Y. Z.)

The first three paragraphs of said Opinion read as follows: Motions are made to dismiss the complaints herein on two basic grounds:

First, it is alleged that the two documents filed as complaints fail to disclose valid claims;

Second, that plaintiff is an incompetent person and therefore has no right to sue in the absence of a guardian.

Whereas the motion of counsel for the defendants, Utah Fuel Company, et als. (pages 112-113 Record), set forth as follows:

1. The complaint contains unnecessary repetition, prolixity, scandal, impertinence, obscurity and uncertainty, and other violations of the rules of pleading.

2. That the matters complained of are now before the Supreme Court of the United States on petition for a Writ of Certiorari filed by complainant herein, in which cause issue was joined by the defendants herein, which injunction inter alias would prevent these defendants from contesting the said application to the Supreme Court of the United States. Respectfully (etc.); and the Motion of William V. Rosenkrans set forth as follows:

1. Because the bill of complaint lacks certainty and is not so framed as to reasonably appraise these moving defendants of the elements of the case to be made against them. 2. Because the bill of complaint so far as these moving defendants are concerned, discloses no cause of action and sets forth no grounds for equitable relief against these defendants, or either of them. 3. Because the bill of complaint seeks to enjoin these defendants and each of them from carrying on a conspiracy against complainant without alleging, so far as these defendants are concerned, any specific acts of conspiracy, at all. 4. Because the bill of complaint (see Paragraph #4 of the prayer, page 38), prays to enjoin "the defendants, their officers and agents, procurers *and each of them,* from prosecuting and carrying on the conspiracy set forth in the several Counts of the complaint of the said action at law #728" (said ac-

tion at law #728 being set forth at length in Paragraph 1 of the bill of complaint, page 3, and referred to throughout the bill.) Whereas, said bill of complaint shows upon the face of it that the complaint in said action at law #728, so far as these defendants and their clients are concerned, was struck and the service of the summons thereon quashed (see Paragraph 1) of bill of complaint under captions #1 and ruling, page 18). 5. Because so far as these defendants are concerned, the bill of complaint is utterly without foundation—in paragraph #1 of the bill of complaint, it is alleged that the bill is filed as ancillary and auxiliary and dependent upon an action for conspiracy commenced in this court on the law side and designated as case #728, and on page 18 of the bill of complaint, it sets forth that said action at law so far as these defendants and their clients are concerned was dismissed and an order granted quashing the summons therein. The alleged suit #728 for conspiracy having been dismissed so far as these defendants and their clients are concerned, this bill of complaint dependent upon said action at law is without status, and cannot be used as a subterfuge to circumvent the said order of the United States District Court striking the complaint and quashing the service of summons. Dated: April 15th, 1943. William V. Rosenkrans, Pro Se and as attorney.... And the Motion of Louis Antonopoulos and George Lavdas set forth as follows: (Caption and Notice.)

1. Because the complaint lacks certainty and is not so framed as to reasonably apprise defendants of any facts or elements of the case to be made against them. 2. Because the allegations of the Complaint are so vague, indefinite, incoherent and unrelated it is impossible to frame an answer thereto. 3. Because the Complaint does not set forth any factual basis or facts to warrant the issuance of

the writ. 4. Because the Complaint does not set forth a cause of action. 5. Because the Complaint does not sufficiently set forth or inform defendants of any facts or acts on the part of these defendants. 6. Because the Complaint herein for Writ of Injunction is apparently based upon the acts or facts or allegations complained of by this plaintiff in a certain action at law No. 728, in which these defendants were not parties defendant. Respectfully. Geo. A. Cella, Attorney (etc.) Dated: March 24, 1943. These are the three motions filed to the Bill in Equity. As to the Declaration in Civil No. 728, see above.

14. CH. Za. Zb.

Za. Whether the Companion Case Rule applies to and governs the suit on the Equity side of the Court for injunction and makes the Counts sustained by the rulings of Judge Thomas Glynn Walker applicable to the suit in equity.

Zb. Whether the bill as filed on the equity side of the Court is open to amendment if thought necessary.

REASONS (Za. Zb.)

1. The decision of Judge Thomas G. Walker in Civil No. 728 (pages , Record), is controlling as the law of the case or at least as authority in its companion case No. 2800, which is involving the same subject matter and is between the same parties. Citations set forth under Reason S. are repeated here. See also page 61 of Brief to C. C.A. 3rd C.; and pages 53-54-55 of same Brief.

2. The argument and authorities set forth under Ch. (N. O.), supra, are repeated here with like force and effect as if the said chapter was set forth herein. The said chapter is set forth in the Appendix, pages , of this Petition.

15. CH. Aa.

Whether the Utah Fuel Company's Motion for injunction and the Exhibits attached thereto, gathered from the States of Utah, New Jersey and New York and the District of Columbia, whereat overt acts in furtherance of the object of the conspiracy were committed, constitue adoption or ratification of every wrong committed in furtherance of the object of the conspiracy. (Cooley on Torts, Sec. 76.)

REASON (Aa.)

The batch of exhibits, together with the motion for injunction against the petitioner herein and plaintiff in the district court, obtained, photostated and compiled with full knowledge of the fact that they were perjured which perjuries were done in the interest of the respondent, Utah Fuel Company, to-wit: He (this petitioner) filed suit against Utah Fuel Company. See the deceptive and mobish proceedings had in the District Court of Salt Lake County, Utah, and Supreme Court of D. C.), and were intended to further the purpose of its conspiracy. It will be helpful here to state that the first arrest was made for refusing to drop the said suit against the above named respondent and all the deceptive and mobish trials had there-

on were based on the ground that the petitioner filed suit against it. See the photostated Record which includes the Complaint as filed in the United States District Court for the District of Utah. All those matters set forth in the exhibits were of record when Judge Walker handed down his Memorandum Opinion on November 19, 1931. A motion will be made to Judge Phillip Forman of the court below, here in Trenton, praying for an Order directing the transmission to the Court here all exhibits on file and record in the District Court. See also those filed with the Clerk of the C.C.A. 3rd C., which are parts of the Record on Appeals Nos. 8027 and 8664.

"That an act for another by a person not assuming to act for himself but such other person, though without any precedent authority whatever, becomes the act of the principal if subsequently ratified by him is the known and well established rule of Law. Cooley on Torts, Sec. 76, hereunder.

Cooley on Torts, Sec. 47.

COOLEY ON TORTS, 4th Ed., Sec. 47.

Some torts are in their nature joint torts, because the action of several is required to accomplish them. . . . Cooley on Torts, Sec. 74. Conspiracy. Such a case would be a conspiracy to ruin one in his reputation, or to defraud him of his property; originating in combination, and carried out by joint action, or at least in pursuance of the joint arrangement and understanding. 6 Saunders v. Freeman, Pl. Com. 209; Burton v. Fulton, 49 Pa. St. 151; Hutchins v. Hutchins, 7 Mill (N. Y.), 194; s. c., Bigelow, Lead. Cas. on Torts, 207; Brannock v. Bouldin, 26 N. C. (41 red.) 61; Wildee v. McKee, 111 Pa. St. 335, 2 Atl. 108,

56 Am. Rep. 271. The text approved, Buckley v. Mulvile, 102 Iowa 602, 70 N. W. 107, 71 N. W. 428, 63 Am. St. Rep. 479. Where several persons conspire to unlawfully injure another, they are jointly and severally liable for such injury. Wilson v. Davis, 138 Ark. 111, 211 S. W. 152; Revert v. Hesse, 184 Cal. 295, 193 Pac. 943; Smith v. Manning, 155 Ga. 209, 116 S. E. 813; Leech v. Farmers' Tobacco Warehouse Co., 171 Ky. 791, 188 S. W. 886.

The general rule is, that a conspiracy cannot be made the subject of a civil action unless something is done which without the conspiracy, would give a right of action. Note 7, citing numerous cases. The damages is the gist of the action, not the conspiracy; 8. Note 8, citing numerous cases. . . .

Sec. 75. What Constitutes Participation? Most wrongs may be committed either by one person or by several. When several participate, they may do so in different ways, at different times, and in very unequal proportions.

Sec. 76. Adoption or Ratification of a Wrong. In order to constitute one a wrongdoer by ratification, the original act must have been done in his interest, or been intended to further some purpose of his own. Lord Coke on this subject, says: "He that agreeth to a trespass after it is done is no trespasser, unless the trespass was done to his use or for his benefit, and then his agreement subsequent amounteth to a commandment." 31 (citing numerous cases). Chief Justice Tindall presents the same principle more fully, in the following language: "That an act for another by a person not assuming to act for himself but for such other person, though without any precedent authority whatever, becomes the act of the principal if subsequently ratified by him, is the known and well estab-

lished rule of law. In that case the principal is bound by the act, whether it be for his detriment or his advantage, and whether it be founded on a tort or a contract, to the same extent as by, and with all the consequences that follow from, the same act done by his previous authority. Such was precisely the distinction taken in the Year Book, 7 Hen. 4, Fo. 35—The ratification should also be with full knowledge of the acts, or with the purpose of the party, without inquiry, to take the consequences upon himself. 32 Myers v. Shipley, 140 Md. 380; 116 Atl. 645 20 A. L. R. 1460; Williams v. Cape Fear Lumber Co., 172 N. C. 299, 90 S. El. 254; Frick Reid Supply Co. v. Hunter, 47 Okla. 151, 148 Pac. 83; Lewis v. Read, 13 M. & W. 834; Adams v. Freeman, 9 Johns (N. Y. P. 117); Dally v. Young, 3 Ill. App. 39.

Sec. 81. Liability for Intentional Injury. Where several persons unite in an act which constitute a wrong to another, intending at the time to commit it, or doing it under circumstances which fairly charge them with intending the consequences which follow, it is a very reasonable and just rule of law which compels each to assume and bear the responsibility of the misconduct of all 66. Miller v. Fenton, 11 Paige (N. Y.) 18; Nelson v. Cook, 17 Ill. 443; Turner v. Hitcock, 20 Iowa 310; McMannus v. Lee, 43 Mo. 206, 97 Am. Dec. 386; Wallace v. Miller, 15 La. Ann. 449; Lewis v. Johns, 34 Cal. 629; Shepherd v. McQuilkin, 2 W. Va. 90; Woodbridge v. Conner, 49 Me. 353, 77 Am. Dec. 263; Brown v. Perkins, 1 Allen (Mass.) 89; Barden v. Felch, 109 Mass. 154; Johnson v. Barber, 10 Ill. (5Gilm.) 425, 50 Am. Dec. 416; Clay v. Waters, 161 Fed. 815, citing Cooley on Torts, 3d Ed.; Selby v. Lindstrom, 59 Okla. 227, 158 Pac. 1127.

Sec. 85. What Constitutes a Joint Wrong or Joint Liability. All who actively participate in any manner in the commission of a tort, or who command, direct, advise, encourage, aid or abet its commission, are jointly and severally liable therefor. 27 (Numerous citations cited hereunder.) (15 C. J. S.), p. 994. 1. Civil Liability. Secs. 1-33, p. 993. Sec. 1. Nature and Elements. A civil conspiracy is a combination of two or more persons by concerted action to accomplish an unlawful purpose. (There are over a page of citations cited hereunder.)

Time to sue and limitations. Sec. 22, "is not subject to a limitation which control as another form of action." Note 10, N. J., Van Horn v. Van Horn, 28 A. 669, 56 N.J.L. 318.

16. CH. Ba. Ba. b.; Ba. C.; Ba. d.

Ba. Whether the fact that the petitioner herein gave unto the defendant, Utah Fuel Company, his resignation of his compulsory assumption of the office or job of interpreter, legal local agent with "jurisdiction" over all cases between employer and employees, and refused to reassume or resume it when he was ordered by the officials of said defendant company, constitutes the said defendant's motive or reason for instituting the conspiracy set forth in the Record of the cause to destroy the petitioner herein and its former legal local agent at Clear Creek, Utah.

Ba. b. Whether the defendant Utah Fuel Company and its contract doctors were motivated to refuse to the brother of this petitioner hospitalization; the needed medical treatment and operation; pronounce him tubercular and incurable; and to put him out of its General Hospital

thereby forcing the petitioner herein to remove his brother to private hospital and to bear all expenses of medical treatment and operation, hospitalization, and convalescent means to restore him to his normal health because of the petitioner's unwillingness to bear his share of the brunt of the said defendant's operations.

Ba. c. MOTIVE.—Whether the fact that the defendant Utah Fuel Company and its contract doctors refused hospitalization to the brother of this petitioner, refused the needed medical treatment and operation, pronounced him tubercular and incurable and put him out of its general hospital to die a martyric death is the motive, cause or reason for carrying on the conspiracy at any cost? And

Ba. d. Whether it presumed to, intended, and to intend, the natural and probable consequences of its acts, including the duration of the conspiracy.

REASONS (Ba. Bb. Bc. Bd.)

1. The conspiracy originated when this petitioner gave up his job as interpreter with the respondent, Utah Fuel Company. Thereafter he was forced to mine coal out of stumbs where in rock roof from one foot and over in thickness was coming down from bounces of cave in all around. There were no suitable timber furnished to prop up the roof and death was hanging on all six miners working thereunder. Petitioner had become an expert in this line of work and held it for years. There were no way out because the mine foreman and the mine superintendent visited the death trap and pointed out the dangers but refused to order the endangered miners out of danger and

refused to check the Japs who were behind causing the danger; and refused to pay for the work removing the rock which cracked from the roof and mingled with the coal. Thus the petitioner was forced to give up his employment with said respondent-company. Two years thereafter, with the aid of one Mr. Skliris, interpreter general, he was re-employed by said respondent as miner but he was taken and assigned a driver's job in a rock tunnel which was then driven because they could not get any one to handle the job as it should be handled. This job was as dangerous as the one stated above and more so but it paid. He was returned to stumps after the tunnel was just about through and held the job up to the year 1918. When his brother was stricken with sickness he was assigned the job of a nurse over him in his home, No. 144 Clear Creek, Utah, and for forty days he had to play nurse to save his brother. Your petitioner herein was then studying two courses in Law, one with the LaSalle Extension University, Chicago, Ill., and one with the Agriculture College of the State of Utah, Logan, Utah, and the officials of said respondent were uneasy less they be exposed in their operations. There is no room for doubt but that the said respondent and its officials were motivated by the fear of the consequences of their operations and treatments of their miners that moved them to do away with your petitioner herein, and after so many years here they are at it just as they were in the beginning, when they originated the plot to do away with your petitioner at any price. See the hundreds of cases against it quoted in the Appendix of the Declaration and the Reports of the Industrial Commission of Utah and those of the Courts of the State of Utah. There are more cases against it than any other person or corporation doing business in the State of Utah.

2. EVIDENCE. key 64. Intent. One is presumed to intend the natural and probable consequence of his acts. C.C.A. Ga., 1926. Lovett v. Faircloth, 10 F. 2d 301, certiorari denied, Faircloth v. Lovett, 46 S. Ct. 355, 270 U. S. 659, 70 L. Ed. 785; C.C.A. Mo., 1926. Houchin Sales Co. v. Angert, 11 F. 2d 115; D. C. N. Y., 1932. In re Wernecke, 1 F. Supp. 127, (1) It means that the conspiracy was made with the intent to injure, because the law presumes that one intends the ordinary results of his acts.

3. A person is presumed to intend the natural consequences of his acts. C.C.A. S.C., 1918. Navassa Guano Co. v. Cookfield, 253 F. 883, 165 C.C.A. 363.

4. U. S. Wis. 1872. The law authorizes the presumption that a person of ordinary intelligence intends what is the necessary and unavoidable consequence of his acts. Wager v. Hall, 83 U. S. 584, 16 Wall, 581, 21 L. Ed. 504, affirming Hall v. Wager, Fed. Cas. No. 5, 951, 3 Biss. 28, 5 West. Jur. 538, 5 N. B. R. Chi. Leg. N. 401.

5. MOTIVE. "A motive is some cause or reason that moves the will and induces action". In re Eaves. 30 F. 21, 26.

6. "In sense of the criminal law, 'motive' has been well enough defined as that which leads or tempts the mind to indulge in a criminal act, and it is something that may be resorted to as a legitimate help in arriving at the ultimate act in question." Thompson v. United States, 144 F. 14.

7. Motive is an inducement, or that which leads or tempts the mind to indulge a criminal act. People v. Fitzgerald, 50 N. E. 846, 847, 156 N. Y. 258.

8. Motive is the inducement, reason, cause, or incentive for the doing of an act. Bates v. Commonwealth, 225 S. W. 1085, 1091, 189 Ky. 727.

Motive. Is the inducement, cause or reason why a thing is done. Black's Law Dictionary. Citing: Chatfield v. Wilson, 5 Am. Law Reg. (O. S.) 528.

17. CH. Ca., Da.

Whether the plaintiff in the district court, appellant in the C.C.A. 3rd C. and petitioner here have had timely appealed from the Opinion and Orders signed and entered thereon, the Judgment of the District Court?

Da. Whether the appellant on appeal to the Circuit Court of Appeals Third Circuit fully and truly presented the issues in the cause to the said Court; and whether the said Circuit Court failed and neglected to adjudicate the issues so presented notwithstanding the fact that the appellees and their counsels failed to appear and argue their defense?

REASON (Ca, Da). The appeal to the Circuit Court of Appeals Third Circuit was timely taken. See page 6, 2d paragraph. of Brief to said Court. Also the Docket Entries (page , Record, Da).

The issues in the cause on appeal to the said circuit court were duly presented by the petitioner but, notwithstanding the fact that no counsel appeared to argue the defense of the appellees, the said Court failed to consider

and decide any of them. For that reason the Brief as filed on said Appeal will be presented to this Court as an exhibit for whatever inference the Court may be able to derive from the same thereof. Hughe's Federal Practice, Section 6235, and the cases cited therein. Your petitioner deems this said Brief important to his cause and for that reason he would present copies of the same. It sets forth cases similar in point of law and fact but the court of appeals failed to try the appeal.

18. CH. Ea.

Ea. Whether there is a conflict of decisions in the district court between the decision of Judge Thomas Glynn Walker and that of Judge Guy L. Fake in the same cause on the same facts, pleadings and Exhibits?

REASON (Ea).

1. There is a conflict of decisions in the district court between the decison of Judge Thomas Glynn Walker and that of Judge Guy L. Fake in the same cause, on the same facts, pleadings and exhibits, and parties. The decision of Judge Walker on motion No. 4 is entirely based upon the grounds more particularly set forth in the Notice of Motion and Motion Addressed to the several Counts set forth in said Motion, to wit: (Caption and Notice.)

1. In the first count the plaintiff fails to allege any facts tending to show an obligation on the part of the defendant, The Utah Fuel Company, to reimburse the plaintiff for the alleged expenditures by the plaintiff for the benefit

of another, or of any agreement or undertaking on the part of the defendant company so to do. Nor is Exhibit "A" referred to therein evidence of any such alleged obligation. Plaintiff relies upon the allegations of Paragraph 3 to 13 as a basis for establishing the obligation alleged in the first count. While the said paragraphs may allege an agreement between the defendant company and a third person, there is no allegation therein contained of any expressed or implied agreement on the part of the defendant company to reimburse plaintiff for alleged voluntary expenditures by plaintiff for the benefit of said third person. 2. In the second count the plaintiff fails to allege any facts which would disclose a cause of action against the defendant-company and its agents or associates, and the allegations of paragraphs 36 to 39 therein referred to set forth facts that are totally disconnected with the activities of the company defendant and its agents and associates. The second count contains vague, indefinite and unrelated allegations, and is made up of accusations and conclusions of law totally unsupported by alleged facts. 3. In the seventh count the plaintiff fails to allege any facts which would constitute grounds for a cause of action against the defendant-company and its agents, and it is otherwise indefinite, uncertain, scandalous and bad for duplicity, and is made up of accusations and conclusions of law totally unsupported by alleged facts.

4. In the eighth, ninth and tenth counts plaintiff fails to allege any actions of the therein named defendants which are in any way attributable to the defendant-company and its agents and associates, and hence the allegations of activities on the part of the therein mentioned defendants which took place more than twenty years ago are totally unrelated to any alleged acts of the defendant-com-

pany. In addition there is contained in the tenth count scandalous charges against an officer of the United States Courts. 5. In the eleventh, twelfth, thirteenth and fourteenth counts plaintiff makes scandalous accusations of alleged misconduct on the part of the defendant-company and its agents and associates,—which wrongful acts, it is alleged took place more than twenty years before and were committed with the purpose of preventing plaintiff from prosecuting an alleged cause of action against the defendant-company. There are, however, no facts alleged which would tend to establish the claim that plaintiff had cause to institute suit against defendant-company and indeed, the plaintiff's allegations clearly defeat the contention that he has or ever had a cause of action against defendant-company. 6. The fifteenth, sixteenth and seventeenth counts contain nothing more than a number of unrelated, irrelevant and scandalous charges against several named defendants who are in no way alleged to have acted as agents or associates of said defendant-company, or to have had any connection with said defendant-company. 7. The eighteenth, nineteenth and twentieth counts contain further unrelated, irrelevant and scandalous charges involving alleged acts performed approximately eighteen years ago by persons whose connection with defendant-company is not stated. Furthermore it is alleged that such remote and unrelated acts were done for the purpose of preventing plaintiff from prosecuting an alleged cause of action which is shown on the face of the complaint never to have existed in the plaintiff's favor. 8. The twenty-third and twenty-fourth counts contain scandalous charges that the defendant-company conspired with petitioner herein to maliciously renew and re-open the alleged persecution of the plaintiff,—although it appears from the allegations of the plaintiff that petitioner

herein appeared in behalf of defendant company in answer to a complaint filed by said plaintiff against said company-defendant.

9. The twenty-fourth count also contains unrelated and scandalous allegations concerning the Courts and officials of the United States.

10. The twenty-fifth count contains only a narrative of facts which are unrelated, irrelevant, immaterial and scandalous, and contains no allegation of probable cause.

AND FURTHER TAKE NOTICE that at said time and place we will move for an order striking the said complaint and all counts therein upon the ground that said document contains unrelated and scandalous allegations concerning the Courts and officials of the United States of America and the State of Utah, and should not be allowed to remain among the records of this Court.

Respectfully,
Minton & Rogers,
Attorneys for Defendants.
The Utah Fuel Company and
H. Collin Minton, Jr.

SPECIAL APPEARANCE & NOTICE.

TAKE NOTICE, That I hereby enter a Special Appearance on behalf of the defendants Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Maybe, (Charles R. Mabey), and W. D. Sutton; and that on Friday, May 3, 1940, at 10:30 o'clock in the forenoon, (D.S.T.), or as soon thereafter as counsel may be heard,

in the United States District Court rooms, Post Office Building, Trenton, N. J., I will move to quash service of the subpoenae made upon the above named defendants.

Respectfully,

Minton & Rogers,

Attys. for above named def'ts

by special appearance.

2. There here in the above motion is the answer of the deception of the Opinion of Judge Guy L. Fake (page , Record). As to the argument against the decision of Judge Fake the matters set forth in Reasons (Y.Z.) are repeated here with like force and effect as if those said matters were set forth herein and under, because your petitioner feels sorry to say that he fears that his petition for writ of certiorari may be thought to be too long, but this is a matter of self-defense and has to be.

3. The said demurrer (or motion) came on to be heard and argued before Judge Thomas G. Walker and the date set therein. The moving defendants were represented in court by H. Collin Minton, Jr., who answered his turn and call of his Motion for Demurrer and made a short argument. Further on this see the Stenographic Transcript of the hearing it is to be found in the exhibits which are to be sent up by the Clerk of the Circuit Court of Appeals Third Circuit. Said counsel was given every opportunity to present his defense, if he had any. Your petitioner herein submitted his part of the argument on his Opposing Affidavit which see (pages 8 to 44 inclusive of the Record). Thereafter and on the 19th day of November, 1941, Judge Walker handed down and entered his Memorandum Opinion on all the four-five motions then pending before him. Motion No. 1 was argued by Wil-

liam V. Rosenkrans and Motion No. 3 was not argued but a letter had been written to the Court submitting the motion and the affidavit attached thereto.

4. Under Civil Procedure Rule relating to findings by Court the formal findings of fact and conclusions of law separately stated by Judge Walker take place of Opinion written by the Court on the facts and law present in the cause. Roberts, S. Ct. J. in Mayo v. Lakeland Highlands Canning Co., 309 U. S. 521, 60 S. Ct. 521, and cases cited. The Argument or part of the decision is to be found under reasons (J.K.L.M.) and the same is repeated here. The findings of Judge Walker were obviously necessary to the intelligent and orderly presentation and proper disposition of the appeals had in this cause and constitute the cause res judicata or the law of the case. The argument and cases cited under reasons (N.) are repeated here. To the same effect and with like force the parts of the decision of this Court in Mayo v. Lakelands (etc.) supra. set out under reasons (J.K.L.M.).

To the same effect and with like force the:

LAW OF THE CASE, 72 FD, pp. 15, 16, 17.

Sibald v. United States, Fla., 37 U. S. 488, 12 Pet. 488, 9 L. Ed. 1167;

Galpin v. Page, Cal., 85 U. S. 350, 18 Wall. 350, 21 L. Ed. 959;

Messinger v. Anderson, Ohio, 32 S. Ct. 739, 740, 225 U. S. 436, 56 L. Ed. 1152;

Standard Sewing Mach. Co. v. Leslie, Ill., 118 F. 557, 559, 55 C.C.A. 323;

The Dredge A., D.C.N.C., 217 F. 617, 622;

Pennsylvania Mining Co. v. United Mine Workers of America, C.C.A. Ark., 28 F. 2d 851, 853, 855;
Illinois Cent. R. Co. v. Crail, C.C.A. Minn., 31 F. 2d 111;
Walker v. Taylor Engineering & Mfg. Co., C.C.A. Okl., 34 F. 2d 748, 749;
National Brake & Electric Co. v. Christensen, C.C.A. Wis., 38 F. 2d 721, 722;
Triborough Chemical Corporation v. Doran, D. C. N. Y., 39 F. 2d 479, 480;
International Brotherhood of Electrical Workers, Local No. 134, v. Western Union Telegraph Co., C.C.A. Ill., 46 F. 2d 736, 737;
Page v. Arkansas Natural Gas Corporation, C.C.A. Ark., 53 F. 2d 27, 31;
Aetna Life Ins. Co. v. Wharton, C.C.A. Ark., 63 F. 2d 378, 379;
American Surety Co. of New York v. Bankers Savings & Loan Ass'n of Omaha, Neb., C.C.A. Neb., 67 F. 2d 803, 805;
Seagraves v. Wallace, C.C.A. Tex., 69 F. 2d 163, 164;
Claiborne-Reno Co. v. E. I. Du Pont de Nemours & Co., C.C.A. Iowa, 77 F. 2d 565, 566, 567;
Miller v. Travelers Ins. Co. of Hartford, Conn., C.C.A. Ill., 80 F. 2d 503, 504;
New York Life Ins. Co. v. Stone, C.C.A. Mass., 80 F. 2d 614, 616;
De Parcq v. Liggett & Myers Tobacco Co., C.C.A. Minn., 81 F. 2d 777, 779;
Hunt v. Commissioner of Internal Revenue, C.C.A. 582 F. 2d 668, 670;
United States v. Hossmann, C.C.A. Mo., 84 F. 2d 808, 810;

Carpenter v. Durell, C.C.A. Tenn., 90 F. 2d 57, 58.
Lauf v. E. G. Shinner & Co., C.C.A. Wis., 60 F. 2d 250;
In re G. W. Giannini, Inc., C.C.A.N.U., 90 F. 2d 445, 448, 111 A.L.R. 1492;
Page v. Regents of University System of Georgia, C.C.A. Ga. 93 F. 2d 887, 889;
New York Life Ins. Co. v. Golightyly, C.C.A. Ark., 94 F. 2d 316, 319;
City of Orlando v. Murphy, C.C.A. Fla., 94 F. 2d 426, 429;
State of Kansas ex rel. Beck v. Occidental Life Ins. Co., 95 F. 2d 935, 936;
Davis v. Davis, 96 F. 2d 512, 516, 68 App. D. C. 240;
Thompson v. Park Sav. Bank, 96 F. 2d 544, 547, 68 App. D. C. 272;
Deppe v. General Motors Corporation, C.C.A. N. J., 98 F. 2d 813, 815;
Millers' Mut. Fire Ins. Ass'n of Illinois v. Bell, C.C.A. Minn., 99 F. 289, 292;
Reynolds Spring Co. v. L. A. Young Industries, C.C.A. Mich., 100 F. 2d 257;
Chicago, St. P., M. & O. Ry. Co. v. Kulp, C.C.A. Minn., 102 F. 2d 352, 354;
Cummings v. Harbee, 102 F. 2d 622, 625, 70 App. D. C. 18;
Munro v. Post, C.C.A. N. Y., 102 F. 2d 696, 688;
South Florida Securities, Inc. v. Seward, C.C.A. Fla., 103 F. 2d 872, 873;
Golden West Brewing Co. v. Milonas & Sons, C.C.A. Cal., 104 F. 2d 880, 881;
Nielsson v. Utah Const. Co., C.C.A. Idaho, 104 F. 2d 887, 892;

Johnson v. Commissioner of Internal Revenue, C.C.A. 8, 105 F. 2d 454, 456;
New York Life Ins. Co. v. Gamer, C.C.A. Mont., 106 F. 2d 375, 376;
Fidelity & Deposit Co. of Maryland v. Port of Seattle, C.C.A. Wash., 106 F. 2d 777;
Pike Rapids Power Co. v. Minneapolis, St. P. & S.S.M. Ry. Co., C.C.A. Minn., 106 F. 2d 891, 894;
F. W. Woolworth Co. v. Carriker, C.C.A. Mo., 107 F. 2d 689, 692;
Leader v. Apex Hosiery Co., C.C.A. Pa. 108 F. 2d 71, 81;
Fidelity & Guaranty Fire Corporation of Baltimore, Md., v. Bilquist, C.C.A. Wash., 108 F. 2d 713;
Atchison, T. & S. F. Ry. Co. v. Ballard, C.C.A. Tex., 108 F. 2d 768, 772;
Acker v. Herfurth, Jr., Inc., 110 F. 2d 241, 244, 71 App. D. 241;
Marcalus Mfg. Co. v. Automatic Paper Mach. Co., C.C.A. N. J., 110 F. 2d 304;
Cochran v. M. & M. Transp. Co., C.C.A. R. I., 110 F. 2d 519, 521;
Connett v. City of Jerseyville, C.C.A. Ill., 110 F. 2d 1015, 1018;
Von's Inv. Co. v. Commissioner of Internal Revenue, C.C.A. 9, 111 F. 2d 440;
Kurn v. Stanfield, C.C.A. Mo., 11 F. 2d 469, 474;
Guardian Life Ins. Co. of America v. Kissner, C.C.A. Mo., 111 F. 2d 532;
Sartor v. Arkansas Natural Gas Corporation, C.C.A. La., 111 F. 2d 772;
Fidelity & Deposit Co. of Maryland v. Helvering, 112 F. 2d 205, 207;

Gosney v. Metropolitan Life Ins. Co., C.C.A. Mo., 114 F. 2d 649, 651;

Aetna Life Ins. Co. v. McAdoo, C.C.A. Ark., 115 F. 2d 369, 370;

Midland Vallet R. Co. v. Jones, C.C.A. Okl., 115 F. 2d 508, 509;

White v. Higgins, C.C.A. Mass., 116 F. 2d 312, 317, 318;

Sonega Coke & Coal Co. v. Price, C.C.A. W. Va., 116 F. 2d 618, 621;

A. S. Kreider Co. v. United States, C.C.A. Pa., 117 F. 2d 133, 135;

Citizens Nat. Bank of Waco v. Fidelity & Deposit Co. of Maryland, C.C.A. Tex., 117 F. 2d 852, 855;

Citizens Nat. Bank of Waco v. Fidelity & Deposit Co. of Maryland, C.C.A. Tex., 117 F. 2d 852, 855;

Pathe Exchange v. International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada, Local No. 306, D.C.N.Y., 3 F. Supp. 93, 94.

United States v. Davis, D.C.N.Y., 3 F. Supp. 97, 98, 99;

Milwaukee County v. M. E. White Co., D. C. Ill., 17 F. Supp. 759, 760;

The Claremont, D.C.N.Y., 20 F. Supp. 163, 164;

Todd v. Russell, D.C.N.Y., 20 F. Supp. 936, 937;

Cold Metal Process Co. v. E. W. Bliss Co., D. C. Del., 21 F. Supp. 509;

Empire Trust Co. v. Hoey, D.C.N.Y., 22 F. Supp. 366;

Securities and Exchange Commission v. Torr, D.C.N.Y., 22 F. Supp. 602;
Gielow v. Warner Bros. Pictures, D.C.N.Y., 26 F. Supp. 425;
Martin v. United Standard Oil Fund of America, D.C.N.Y., 26 F. Supp. 974;
Southwell v. Robertson, D. C. Pa., 27 F. Supp. 944, 945;
Piest v. Tide Water Oil Co., D.C.N.Y., 27 F. Supp. 1012;
Eisman v. Samuel Goldwyn, Inc., D.C.N.Y., 30 F. Supp. 436, 437;
Mutual Orange Distributors v. Agricultural Prorate Commission of California, D. C. Cal., 30 F. Sup. 937, 943;
Bacharach v. General Investment Corporation, D.C.N.Y., 31 F. Supp. 84, 86;
Frigorifico Wilson De La Argetina v. Weirton Steel Co., D. C. W. Va., 31 F. Supp. 214, 217;
Miller v. Rivers, D. C. Ga., 31 F. Supp. 540, 545;
Higgins v. White, D. C. Mass., 31 F. Supp. 796, 798;
Cason v. American Brake Show & Foundry Co., D. C. Colo., 32 680, 682;
Engler v. General Electric Co., D.C.N.Y., 32 F. Supp. 913, 914;
Mengel Co. v. Inland Waterways Corporation, D. C. La., 34 F. Supp. 685, 689;
In re Campbell, D. C. Cal., 35 F. Supp. 100, 101, 102;
Willias v. Pennsylvania R. Co., D.C.N.Y., 1 F.R.D. 941, 942;
Caballero v. Hudspeth, D. C. Kan., 36 F. Supp. 905, 906;

Williams v. New Jersey New York Transit Co., D.C.N.Y., 1 F.R.D. 138.

5. As to the allegations (paragraphs 1, 5, 6 of said motion) that petitioner's cause of action against respondent company "never to have existed" will say that the Opinion of Judge Johnson United States District Judge for the District of Utah, is as well authority as the "Law of the Case". Judge Johnson was the only Federal Judge in the District of Utah and he was as well as familiar with the operations of the respondent-company and its medical system as no other judge residing and holding judgeship under the Federal Government would be. He is learned in the laws of the State and of the Industrial Act of the State of Utah and personally knew and met your petitioner herein prior to his appointment as Federal Judge for the District of Utah in connection with the matter of Nicholas J. Curtis (Nick) v. W. P. Day, State Court at Ogden, Utah.

19. CH. Fa.

Fa. Whether the Circuit Court of Appeals Third Circuit in affirming the judgment of the District Court, is, or, is not:

a. In conflict with its own decision on appeal No. 8027, on substantially the same facts, between the same parties?

b. In conflict with the determination on application for writ of certiorari (63 S. Ct. 993, 318 U. S. 789, 87 L. Ed. 1156)?

c. In conflict with the decisions of every other circuit court of appeals of the United States?

d. In conflict with applicable decisions of this Court?

e. In conflict with the decisions of the district court in the same case, between the same parties, and substantially the same facts?

f. Whether it has decided important questions of Federal law in a way probable untenable or in conflict with the weight of authority?

g. Whether it has decided important questions of Federal law in a way probable in conflict with applicable decisions of this Court?

h. Whether it has so far departed from the accepted and usual course of judicial proceedings, or has so far sanctioned such a departure by the district court as in the judgment of this Court calls for the exercise by it of its powers of supervision?

1. Reason Fa. The Circuit Court of Appeals Third Circuit, in affirming the second judgment of the district court, HAS RENDERED a decision in conflict with its first and lawful decision on the first and lawful appeal No. 8027, made, decided and entered on the first and lawful determination made by Judge Thomas G. Walker, and holding:

OPINION.

BEFORE MARIS, JONES AND GOODRICH, CIRCUIT JUDGES.

(Filed December 7, 1942.)

PER CURIAM:

For the reasons sufficiently set forth in the memorandum opinion of Judge Walker filed November 19, 1941, the orders of the district court from which the plaintiff has appealed are affirmed.

A true copy:

Teste: W. P. Rowland,
Clerk of the United States
Circuit Court of Appeals
for the Third Circuit.

In the Second Appeal No. 8664 the appeal came on to be heard before Biggs, Goodrich and McAllister, Circuit Judges.

There were no one appearing for the appellees. Your petitioner responded to the call of his case for argument and by permission submitted the Memorandums (pages 336-340; 340-344 Record) and began his argument.

Theretofore the Court in almost screaming emotion requested to take the case under advisement on the Briefs filed. Counsel for the respondent Utah Fuel Company who made the offers to buy the second judgment of the Court below, on information and belief, came to the door of the clerk's office while your petitioner was therein waiting the clerk and inquired of the hearing of the case and he was advised by Mr. Kelley, Deputy Clerk, that the case

was on for hearing on that day and the appellant was then in there waiting, but did not appear in court and thereby he avoided exposure of the ways and means with which and through which he obtained the second judgment from Judge Guy L. Fake. And thereupon the Court of Appeals filed the following Opinion: Per Curiam: The Judgment of the court below is affirmed.

True Copy (etc.).

March 5, 1945.

2. There are now on the records of the case in the circuit court of appeals two decrees in the same case between the same parties the last one in conflict with its first one; to the same effect in the district court the last and false one obtained by the offers made to Judge Fake by Counsel for the respondents herein to pay to him the full amount involved in conflict with the first one of Judge Thomas Glynn Walker.

3. CONFLICT OF DECISIONS PRESENT IN THE RECORD OF THE CAUSE.

Reviewing the authorities on the question of "conflicting decisions" there is to be found as follows:

There is a "conflict of decisions" between a decision of the Court of Civil Appeals (between the federal district court in the same case, and in the Circuit Court of Appeals Third Circuit in the same case) so as to justify certiorari to review a decision of the Court of Appeals (of the District Court as well as of the Court of Appeals) because of a "conflict of decision", where one opinion of the Court of Appeals (of the Federal District Court, and as well as of the Court of Appeals) rules differently from the Supreme Court's (each one from itself in their two

former adjudications) ruling as to the legal effect of the same or substantially similar facts or controversies a general principle of law stated in decisions of the Supreme Court. Words and Phrases Permanent Edition, Vol. 8, State ex rel., and to Use of Heuring v. Allen, Mo. 112 S. W. 2d 843. At page 846: It is settled that the scope of our review on certiorari is to determine whether there is a conflict of decisions, on the rulings made, between the Court of Appeals and the Supreme Court of State ex rel., Metropolitan Life Ins. Co. v. Allen, 337 Mo. 525, 85 S. W. 2d 469; State ex rel. Superior Mineral Co. v. Hostetter, 337 Mo. 718, 85 S. W. 2d 743; State ex rel. Metropolitan Life Ins. Co. v. Daues, Mo. Sup. 297 S. W. 951; Cumpsey v. Brunmley, 55 S. W. 2d 810, (6);

4. Conflict as noun. Defined generally by the Standard Dictionary as meaning a state or condition of opposition, and judicially as meaning discord of action, feeling. City of Avlene v. McMahan, Tex., 292 S. W. 525, 528 (1). The "conflict which will confer jurisdiction upon the Supreme Court" has been often defined, and never more satisfactorily than in Garitty v. Rainly, 112 Tex. 369, 247 S. W. 825: In other words the rulings alleged to be in conflict must be upon the same question, and unless this is so, there can be no conflict. Cultress v. City of San Antonio, 108 Tex. 150, 179 S. W. 515 (187 S. W. 194); McKay v. Conner, 101 Tex. 313, 107 S. M. 45;

5. Antinomia. In Roman Law . . . inconsistent or conflicting decisions or cases.

Antinomy. A term used in logic and law to denote a real or apparent inconsistency or conflict between two authorities or propositions; same as antinomia (q.v.). Black's Law Dic. 2d Ed.

6. Inconsistent. Things are said to be inconsistent when they are contrary the one to the other so that one infers the negation, destruction, or falsity of the other. W. & Phrases. Citing: O'Malley v. Luzerne County, Pa. 3 Kulp. 41, 46.

7. The word "inconsistent" means "in conflict with" and repugnant to. In re Robertson, 20 F. Supp. 270, at p. 273. "Inconsistent" means mutually repugnant or contradictory; contrary the one to the other, so that both cannot stand. Berry v. City of Fort Worth, Tex. Civ. App. 110 S. W. 2d 95, 103.

8. Repugnant. That is repugnant which "is contrary to anything said before" (Jacob) Stroud's Judicial Dictionary, 2d Ed. Vol. 3, p. 1726.

Reason (Fa.).

9. b. This Court is the primary judge as to the effect the second decree of the circuit court of appeals has on the determination of this Court in 45 S. Ct. 343, 267 U. S. 583, 69 L. Ed. 798, but so long as the second decision of the circuit court of appeals is affirming the decision of a disqualified judge entered on terms of mob practice practiced in open court against your helpless and humble petitioner and his cause, there is no room for doubt that such Decree of fraud and deception is in conflict with the said determination of this Court. The law is well settled on the question and need no further comment.

10. Subd. c. For like reasons the second decree of the circuit court of appeals on appeal No. 8664 is in conflict

with the decisions of every other circuit court of appeals because it violates the rule of "Res judicata" or the "law of the case". The citations set forth above under reason Ea are repeated here.

11. Subd. d. For like reasons the decree on appeal No. 8664 C.C.A. 3d C. is in conflict with the applicable decisions of this Court. It would be a vanity to undertake and compile the decisions of this Court which the said decree would be found to be in conflict, because it would be in conflict with all of them. Courts of justice are not established to do wrongs; nor to stage mobish trials and take the rights of the party in right and give them to the party who pays the judge for the judgment.

12. Subd. e. For like reasons and for the further reason that the decree it affirmed for the district court in the second appeal No. 8664 is in conflict with the first decision of the same Court, in the same case between the same parties and on substantially the same facts, the said second judgment is untenable or in conflict with the weight of authority.

13. Subd. f. The complaints (No. 728 and 2800) raise Constitutional questions of due process, equal protection, and deprivation of civil rights; violation of the Articles of the U. S. Constitution and Amendments thereto, and the Statutes cited on the Caption of the Petition; also the Findings of Fact and Conclusions of Law lawfully entered by Judge Walker on November 19, 1941.

15. Subd. g. For like reasons the circuit court of appeals has decided important questions of Constitutional Law and Statutory Federal Law in conflict with all applicable decisions of this Court.

16. Subd. h. For like reasons and for the reasons that it has on its files and records one decree affirming the first and lawful Findings of Fact and Conclusions of Law by the District Court AND ONE AFFIRMING subsequent and second Findings of Fact, false in substance and in fact, in effect dismissing the companion suit No. 2800, and in effect destroying civil No. 728, thereby sanctioning the departure by the lower Court of the legal and usual course of proceedings thereby sanctioning the rule of non uniformity of decisions by the district court as well as by itself; and for the reason that it granted favors to the respondent-company exempting it from the general and accepted duty to comply with the reasonable rulings of the District Court (page , Record) (Refior v. Lansing Drop Forge Co., 24 F. 2d 440 (3)); and of its own Judgment in Appeal No. 8027; and for the reason that:

17. Judicial power is the power of the Courts to decide and pronounce a legal judgment in accordance with the settled rule of procedure and carry it into effect between the plaintiff, as the case may be, and defendant in the cause submitted to them (Justice Miller's in his Treatise on the Constitution, p. 341) quoted with approval in Muskrat v. United States, 219 U. S. 346, 356; again judicial power is the power that is vested in courts to enable them to administer justice according to law. Sutherland, J.; in Adkins v. Children's Hospital, 261 U. S. 525, 544. See also ex parte Gist, 26 Ala., 156, 162; and again judges are holding their office during good behavior (Re Kaine, 14 How. 103, 120; Ex Parte Bakelite Corporation, 279 U. S. 438) and the behavior of Judge Guy L. Fake cannot be said to be good behavior in the cause of your petitioner herein; and for the reason that the said circuit court of appeals third circuit has so far departed from the

accepted and usual course of judicial proceedings; and it has so far sanctioned such departure by the District Court of the United States for the District of New Jersey as to call upon this Court to exercise by it of its power of supervision.

18. This matter or cause is coming on before this Court on the petitioner's petition for Writ of Certiorari and the cause is fully presented by the petitioner herein who wishes to advise this Court that he will print any and all additional parts of the record if in the judgment of this Court is thought to be necessary and proper for a complete review of the lower Courts. The decision of this Court is essential to a complete review of the Circuit and District Courts. For this additional reason this Court is prayed to conclude to consider the questions presented. Section 240 (a) Judicial Code, 28 U.S.C.A. Sec. 347, 8 F.C.A. Title 28, Sec. 347. United States v. Bankers Trust Co., 294 U. S. 240, 294, 295, 79 L. Ed. 885, 895, 896, 95 A.L.R. 1352. Such action is in the interest of justice and expedition. Continental Illinois Nat. Bank & T. Co. v. Chicago, R. I. & P. R. Co., 294 U. S. 648, 685, 79 L. Ed. 1119, 1133, 55 S. Ct. 595, 27 Am. Bankr. Rept. (N. S.) 715; Cf. Story Parchman Co. v. Paterson Parchman Paper Co., 282 U. S. 555, 567, 75 L. Ed. 544, 550, 51 S. Ct. 248; Cole v. Ralph, 252 U. S. 286, 290, 64 L. Ed. 567, 574, 40 S. Ct. 321.

Wherefore, your petitioner respectfully prays that a Writ of Certiorari may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Third Circuit, and that the record herein presented by the petitioner, together with the

exhibits to be sent up by the Clerks of the Lower Courts, be accepted as the record of the cause.

Respectfully submitted,

NICHOLAS J. CURTIS, LL. B.,
Petitioner Appearing Pro Se,
Office and Residence:
No. 145 North Broad Street,
Trenton, New Jersey.

Supreme Court of the United States, Drs., ss.

CERTIFICATE.

I, Nicholas J. Curtis, the petitioner in the foregoing petition for Writ of Certiorari, do hereby certify as follows:

I am an LL. B. of an American University authorized by law to grant said Degree, and in addition thereto a course in law, or part thereof, in classes at the University of Utah, and another at the agriculture college of the State of Utah, Logan, Utah; and from the year to date never ceased studying the authorities on the "Laws of the United States". I also have a splendid course in "New Pandecta" written in splendid Greek dialect by professors of the Law Schools of the University or Universities of Greece, together with Opinions from the Attorneys General of Greece. I have no financial assistance from any one and all costs are paid by myself. As this honorable Court will observe from my record, I am able to go on trial if and when the right to have the assistance of witnesses is given to me preparatory to going on trial, but this is denied although the court below could have the

truth established at my expenses. I am very sorry to say that Judge Guy L. Fake is not qualified to go on trial with my cause and myself. This is shown by his past. This is shown by his own statements. And this is shown by his Opinion in my two causes. I have given to me access to the Law Libraries and I have thoroughly studied every point of law present in my cause in the Authorities and Official Reporters and find that my cause now before this Court is meritorious. I, therefore, certify that it is in the public interest as well as in the interest of myself, that the parties-conspirators participating in the conspiracy set forth in my Record be brought to justice according to the laws of the United States.

NICHOLAS J. CURTIS, LL. B.,
Office and Residence:
No. 145 N. Broad St.,
Trenton, New Jersey.

VERIFICATION.

United States of America,
State of New Jersey,
County of Mercer,
City of Trenton.
} ss. Verification.

Nicholas J. Curtis, for himself, upon oath say: That he is a Bachelor of Laws. That he is the petitioner in the foregoing petition; the appellant in the Circuit Court of Appeals for the Third Circuit and plaintiff in the District Court of the United States for the District of New Jersey; that he is the author of every pleading on file in every suit in which he is the plaintiff and of every docu-

ment on file and of record in the causes now before this Court on Petition for Writ of Certiorari; that he is able and willing to proceed to final hearing or trial in the district court and to that end he prepared and presented to the said District Court Motions for Depositions and Motions for Commissions to examine parties and witnesses preparatory to trial; and that if this inherent and inalienable right to give evidence is accorded he is certain that he will prove more than he has complained and pleaded in his pleadings on file and of record; that he has prepared, drafted and typed the foregoing petition to which this verification is made and has actual and personal knowledge of the matters and things therein set forth; and that all matters and things set forth therein are true to the best of his knowledge and belief; and to the best of the matters of record apparent on the face of the record.

Your affiant further states that the said petition for writ of certiorari is prepared and filed in the utmost good faith, convinced from his experience and struggle in the cause in the course of its trials in the courts below that the said Petition is meritorius, and that it is not presented in order to be vexatious or to delay the final opinion and judgment in the case.

NICHOLAS J. CURTIS,
NICHOLAS J. CURTIS, LL. B.,
Affiant and Petitioner,
Office and Residence:
No. 145 North Broad Street,
Trenton, New Jersey.

Subscribed and sworn to before me this 29 day of May, A. D. 1945.

(Seal)

WM. FRIEDMAN,
Notary Public, Mercer County,
State of New Jersey.

NOTICE.

TO THE ABOVE NAMED RESPONDENTS AND THEIR ATTORNEYS OF RECORD:

Please take notice that a petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit is this day sent up to the Clerk of the United States Supreme Court, Washington, D. C., and by him to be docketed according to law and proceeded therewith in accordance with the provisions of Supreme Court Rule 38. A printed copy of the Petition and Record is herewith served upon you.

Yours, etc.,

NICHOLAS J. CURTIS, LL. B.,
Petitioner Appearing Pro Se,
Office and Residence:
No. 145 North Broad Street,
Trenton, New Jersey.